

SOME ASPECTS OF THE RELATIONSHIP OF  
POLITICAL AND CONSTITUTIONAL THEORIES  
TO THE CONSTITUTIONAL EVOLUTION OF INDIA AND PAKISTAN:  
WITH SPECIAL REFERENCE TO THE PERIOD 1919-1956

by

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## ABSTRACT

This thesis is a study of those political and constitutional theories which mainly since 1919 had their impact on the constitutional evolution of India and Pakistan. The introductory chapter begins with a brief account of the constitutional and political background. An attempt has been made to make a comparative analysis of the constitution-making processes of four countries: the U.S.A. and France, representing the democracies in the West; and Turkey and Japan, representing Asia. The second chapter is devoted to the constitutional discussions in India during the period 1919-1935. The third and fourth chapters analyse the constitutional and political ideas put forth by Hindu and Muslim thinkers. Although the Hindu and Muslim leaders concentrated on the ultimate goal of political freedom from British rule, this study considers in some detail to what extent there was coherent thinking on the system of government to be established in independent India and Pakistan. The fifth and sixth chapters deal with constitution-making in independent India and Pakistan. The final chapter tries to analyse the major influences which shaped constitution-making in both India and Pakistan.

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## ABBREVIATIONS

Report on Indian Constitutional Reforms (Montagu-Chelmsford Report)	M/CR
Indian Statutory Commission	ISC
Indian Annual Register	IAR
Indian Quarterly Register	IQR
Constituent Assembly of India Debates	CAID
Constituent Assembly of Pakistan Debates	CAPD

## CHAPTER I

## INTRODUCTION

India and Pakistan both adopted the parliamentary system after independence. The nationalist leaders called for civil rights, self-government, representative government, self-determination, autonomy in European political terms, because Asian political traditions did not fully comprehend those ideas. These political ideas were derived from European political philosophy and history. The colonists of the British Empire looked to the British Parliament as the supreme model; and the quality of their own politics was regarded as improved, and the range of their liberties enlarged, by the extent to which they approximated to the model.

The parliamentary system had been consistently proclaimed as their goal by the Westernised élite ever since the first Indian National Congress (1885) declared itself to be the 'germ of a Native Parliament.'<sup>1</sup> English-educated Congress leaders brought up on the works of English liberal thinkers, desired British political institutions which they deemed not incapable of transplantation on to Indian soil. 'From our

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1. Report of the First Indian National Congress, 1885, p.3.

earliest school-days', said C. Sankaran Nair in 1897, 'the great English writers have been our classics. Englishmen have been our professors in Colleges. English history is taught us in our schools... It is impossible under this training not to be penetrated with English ideas, not to acquire English conceptions of duty, of rights, of brotherhood'.<sup>1</sup> But the Congress leaders in the early years were chiefly concerned with obtaining political favours for their own educated classes. A typical example of this attitude may be seen in the presidential address of Surendranath Banerjea at the Congress annual session in 1895. 'We should be satisfied', said Banerjea, 'if we obtain representative institutions of a modified character for the educated community who by reason of their culture and enlightenment, their assimilation of English ideas and their familiarity with English methods of Government might be presumed to be qualified for such a boon.'<sup>2</sup> Though the ideal of Swaraj or self-government might be at the back of leaders' minds, there was no definite and clear voice yet calling upon the British to hand over power to Indians. Most Westernised élite still accepted British rule as a dispensation of Divine Providence, an inevitable phase through which India was destined to pass. A 'microscopic minority'<sup>3</sup> was to be the standard British epithet for the Indian educated

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1. Report of the Thirteenth Indian National Congress, 1897, pp.15-6.
  2. Report of the Eleventh Indian National Congress, 1895, p.14.
  3. The phrase was first used by Lord Dufferin, the Viceroy, in 1888. See Sir V. Lovett, A History of the Indian Nationalist Movement, p.42.

classes who led the Congress right into the twentieth century. This 'microscopic minority' theory - the attitude of contempt for the emerging urban middle class - was expressed by John Beames, a civil servant, in a statement to the Aitchison Commission in 1886. Beames declared: 'In the course of my long experience I have constantly found natives deficient in courage, shirking responsibility, careless and indolent. From what I have seen of the large number of natives who have served under me during the last twenty-nine years, I do not think they possess the qualifications which fit them to be admitted to the Covenanted Civil Service.'<sup>1</sup> Whatever might be the racial factor involved in this cold attitude, the British rulers were convinced that power could not be 'committed to indigenous agency.'<sup>2</sup> The Indian leaders, on the other hand, pleaded that 'the problem of bringing the administration into closer relations with the people is essentially a problem of associating the educated classes with the actual work of the administration. With village panchayats at the bottom, District Councils in the centre, and reformed Legislative Councils at the top, this problem will have been fairly faced.'<sup>3</sup> Lord Ripon, the Viceroy, who was responsible for the famous Resolution on Local Self-Government of May, 1882, attempted to open a channel for the aspirations of the emerging middle class by the encouragement of local self-government, by setting up municipalities with an elected element, and by creating district councils for the rural areas. The new middle class 'must be prevented from becoming ... a source of serious political danger.'<sup>4</sup> Both Ripon and A.O. Hume, a retired civil

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1. Public Service Commission, Proceedings, 1887, vol.vi, p.50.
  2. Report of the Public Service Commission, 1886-87, p.36.
  3. Royal Commission upon Decentralization, 1908, vol.viii, Minutes of Evidence, p.61; G.K. Gokhale.
  4. L.S.S. O'Malley, "General Survey", in L.S.S. O'Malley (ed.), Modern India and the West, p.746.

servant, tried to counteract this middle class movement by providing 'political education' to the Indians and by training them 'in the working of representative institutions.'<sup>1</sup> This policy was contrary to the prevailing British view of the necessity to resuscitate the 'natural leadership' (the Princes and the landholders) of Indian society while keeping the new Westernised élite in their place. Ripon, however, denied that they were trying to introduce an English system in India.<sup>2</sup> The Ripon reforms were warmly welcomed by the politically active leaders of Indian society, like S.N. Banerjea, G.K. Gokhale, B.G. Tilak, Dadabhai Naoroji, Badruddin Tyabji, and Pherozeshah Mehta, who were believers in political education of the electorate through participation in local politics and administration as an approach towards national self-government.<sup>3</sup> They made a reality of the municipal government, but the great mass of the people had nothing to do with the political experience which was confined to the few, and continued to have an authoritarian concept of government. The Decentralisation Commission of 1909, which has been called 'the watershed in the history of Indian local government,'<sup>4</sup> made recommendations similar to those of the Resolution of 1882. While they considered the pros and cons of centralisation and decentralisation, but mainly conceived in terms of administrative convenience, rather than of national political aspirations. The commission suggested that 'the foundation of any stable edifice which shall associate the people with the administration must be the village.'<sup>5</sup>

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1. L.S.S. O'Malley, "General Survey", in L.S.S. O'Malley (ed), Modern India and the West, p.746.
  2. L. Wolf, Life of the first Marquess of Ripon, vol.ii, p.100.
  3. See H. Tinker, The Foundations of Local Self-Government in India, Pakistan and Burma, p.58.
  4. Ibid., p.89.
  5. Report of the Royal Commission upon Decentralization in India (1909), vol.i, p.239.

On the whole the commission did not think it possible 'to restore the ancient village system' but the desirability of constituting village panchayats for the administration of local village affairs was emphasised.<sup>1</sup>

The authors of the Council Acts of 1833, 1861, 1892 and the Act of 1909 did not see their schemes as a departure from autocracy or steps towards a different system of government. To quote Macaulay's well-known words: 'The light of political science and of history are withdrawn - we are walking in darkness- we do not distinctly see whither we are going. It is the wisdom of a man, so situated, to feel his way, and not to plant his foot till he is well assured that the ground before him is firm.'<sup>2</sup> When the original proposals for Indian representation in the legislative councils were under discussion, Sir Bartle Frere wrote in 1860 of the necessity of learning of 'what the natives think of our measures, and how the native community will be affected by them.'<sup>3</sup> Frere compared the role of the Indian councils to that of the darbar of an Indian prince 'the channel from which ~~which~~ the ruler learns how his measures are likely to affect his subjects, and may hear of discontent before it becomes disaffection!'<sup>4</sup> The Morley-Minto reforms, which were given effect by an Act of 1909, were intended to provide wide representation of interests. The separate seats were created for the landlords, universities, municipalities, commerce, and Muslims. The principle of election was now recognised. The much enlarged provincial legislative councils were given

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1. Report of the Royal Commission upon Decentralization in India (1909), vol.i, pp.238-9.
  2. Hansard's Parliamentary Debates, 3s., vol.xix, col.513.
  3. M/CR, p.51.
  4. Ibid.

greater powers, including the right to move resolutions, to call for a division and to ask supplementary questions. Non-officials were in a majority in the legislative councils. A small official majority was retained at the centre. Both Morley, the Secretary of State, and Minto, the Viceroy, dismissed the Indian nationalists' demand for colonial self-government as 'a mere dream,'<sup>1</sup> and 'an impossibility.'<sup>2</sup> India, in their view, was 'unfit for popular government.'<sup>3</sup> In his speech to the House of Lords in 1908, Morley remarked: '... if it could be said that this chapter of reforms led directly or necessarily up to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it ... a Parliamentary system in India is not the goal to which I for one moment would aspire.'<sup>4</sup> Minto equally emphasised: 'We have aimed at the reform and enlargement of our Councils, but not at the creation of Parliaments.'<sup>5</sup> Some of the Conservative peers, on the other hand, criticised the bill for envisaging a parliamentary system. Middleton thought that the bill introduced 'some of the very worst features of our own Parliamentary practice.'<sup>6</sup> Curzon found in the enlargement of the legislative councils a 'revolutionary change' and 'Parliamentary bodies in Miniature.'<sup>7</sup> In the words of the Montagu-Chelmsford Report, 'They (Morley and Minto) hoped to blend the principle of autocracy ... with the principle of constitutionalism... to create a constitutional autocracy.'<sup>8</sup> They anticipated that the aristocratic and moderate elements in India would range themselves on the side<sup>of</sup> the government and oppose any

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1. Mary, Countess of Minto, India, Minto and Morley, 1905-1910, p.99.
  2. Ibid., p.305.
  3. Ibid., p.101.
  4. Parliamentary Debates, 4s., vol.cxcviii, col.1985.
  5. Proceedings of the Council of the Governor-General of India, 1909-10, vol.xlviii, p.51.
  6. Parliamentary Debates, Lords, vol.i, col.175.
  7. Ibid., cols.135-6.
  8. M/CR, p.63.



attempt to democratise Indian institutions.<sup>1</sup> Despite Morley's  
repudiation the features of his reforms 'do constitute a  
decided step forward on a road leading at no distant period  
to a stage at which the question of responsible government  
was bound to present itself.'<sup>2</sup>

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During the period between 1919-1935 there was a  
general agreement that the parliamentary system should be  
introduced in India. However, important sections of Indian  
opinion questioned the suitability of parliamentary institutions  
in India. The working of the parliamentary system in Southern  
Asia after independence seems to suggest that the system can  
be established only with difficulty.

John Plamenatz propounds the thesis that 'the non-  
European peoples in changing their institutions have been  
almost entirely imitative. They have sought to make "progress"  
... and it is therefore natural that they should have adopted  
European methods.'<sup>3</sup> The Western democratic political system  
did not prove to be a very successful experiment for the West  
itself: it never became rooted in more than a very few countries -  
in practice, it never went further than the North Atlantic and  
the Anglo-Saxon orbit. Even France never settled down to a  
prolonged democratic system, in spite of the fact that the  
French were adept in preparing recipes for democracy.

Therefore, we witness the breakdown of the formal  
Western political structure or to use Rupert Emerson's phrase 'the  
erosion of democracy.'<sup>4</sup> in the new states of Afro-Asia; and we witness

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1. M/CR, p.63.

2. Ibid., p.68.

3. J. Plamenatz, On Alien Rule and Self-Government, p.145.

4. See R. Emerson, "The Erosion of Democracy", Journal of Asian Studies, November 1960, pp.1-8.

the alternatives, as two major types emerge from the history of the last decade: the military dictatorship, as adopted in the U.A.R., Iraq, Pakistan,<sup>1</sup> Sudan, South Korea, Burma, Turkey, Lebanon, Nigeria and Ghana; and the semi-totalitarian one-party state, centered round a charismatic personality: Guinea, Indonesia, Mali and some other ex-French territories have, in various degrees, adopted this system. The great exceptions, of course, are the Philippines, India, and Ceylon which have managed to sustain their democratic framework. India is the 'show case for parliamentary democracy in Southern Asia',<sup>2</sup> whereas among the Southeast Asian countries, the Philippines provides the only example where there has been a relatively smooth functioning of representative institutions.

Werner Levi has pointed out that democracy was established on a narrow basis of ruling groups; and for a variety of reasons, not all of which reflected deep-seated convictions about its superior qualities as a form of government. Nowhere in South and Southeast Asia did it come as a result of deliberate choice among carefully considered alternatives nor were the mass of its beneficiaries prepared for its arrival. Consequently the forms and mechanics of Western democracy which existed in Asia were not based on the ideological and social realities which made them viable in the West.<sup>3</sup> Emerson also stressed this theme in his Representative Government in Southeast Asia. He points out how in making the brief but stormy passage across the English Channel from Britain to France, the parliamentary system underwent a drastic change. In Southeast Asia, Western institutions are being translated through far greater

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1. Pakistan returned to constitutional government on March 1, 1962, when a constitution was promulgated by President Ayub. But a copy-book adoption of Parliamentary government was renounced.
  2. W. Levi, "The Fate of Democracy in South and Southeast Asia", Far Eastern Survey, February 1959, p.25.
  3. Ibid. See also R. Emerson, From Empire to Nation, ch.xv.

distances of time, of culture and of race, and it is only reasonable to expect that these Western-style representative institutions will in due course develop particular attributes of their own which will differentiate them sharply from their prototypes. Emerson has also referred to what he calls 'the most important as well as the most obvious thing.' The basic cultural heritage of the peoples of Southeast Asia is totally different from that of the peoples of Western Europe who were the creators of representative government: that individualism and egalitarianism which have been an essential part of the underpinning of democracy in the West have not generally been present in the Asian tradition.<sup>1</sup> Most of the leaders of India and Pakistan have refused to agree to this assumption. Radhakamal Mukherjee in his Democracies of the East speaks of the democratic tradition of the former time-honoured system of the majlis and panchayat in the East. He maintains that the communal-democratic system of politics based on Islam is a no less remarkable phenomenon of political evolution than the development of Athenian and Roman republics.<sup>2</sup> Sydney D. Bailey detected a 'good deal in indigenous democracy' in the region which was favourable to the development of parliamentary institutions. He points out how in the Asian countries the villages had been traditionally managed by representative councils. The adoption of the parliamentary system in the former British colonial territories in Asia has been described by Bailey 'as a momentous act of faith' by the political leaders of those countries.<sup>3</sup> The politically conscious minority of Asian countries had first-hand experience with the embryonic parliamentary system which had been in the

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1. R. Emerson, Representative Government in Southeast Asia, pp.6-11, From Empire to Nation, pp.272-92.
  2. R.K. Mukherjee, Democracies of the East, pp.174-6.
  3. S.D. Bailey, Parliamentary Government in Southern Asia, p.9.

process of development. In particular, the lawyers, who were always predominant in the nationalist movements, had studied and come to respect some of its main principles. Whatever defects the system seemed to have, it had no real rivals.<sup>1</sup> In India and Pakistan, indeed there were in some circles strongly-held views that it might be better to avoid British forms if possible. It was argued that institutions cannot be easily transplanted from one country to another, and that Asians should devise constitutional forms appropriate to the Asian tradition. But under the guidance of the largely Westernised élite, the constitution-makers have turned to Western Europe and the United States to furnish the experience on which they might draw. The Gandhians in India and <sup>purists</sup> Islamists in Pakistan did call for a Gandhian and an Islamic constitution respectively but they could not pose a serious challenge. Theirs were the voices crying in the wilderness. Pakistan tried hard to incorporate into a Western constitution the elusive concept of the Islamic state. But after years of fruitless discussion about the proposed constitutional provisions, no agreement could be reached about the precise way in which an Islamic democratic state differed from a Western democratic state. Some concessions were, of course, given to the protagonists of these ideas in the respective constitutions. In India, the directive principles included provisions regarding the setting up of village panchayats, promotion of cottage industries, prohibition on alcohol, and a ban on cow slaughter which were concessions to traditional Hindu attitudes. The 1956 Pakistan Constitution went furthest in this respect. Pakistan was described as an 'Islamic Republic.' The directive principles included the clauses about preventing prostitution, gambling, drinking and the elimination

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1. S.D. Bailey, Parliamentary Government in Southern Asia, pp.9-10.

of riba (usury). There were provisions regarding 'the promotion of Muslim unity and international peace' and 'promotion of Islamic principles'. It was stated that, 'Steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Quran and Sunnah.' Article 198 read: 'No law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah .... and existing law shall be brought into conformity with such Injunctions'. The head of state must be a Muslim and Articles 197 and 198 instructed the President to establish an Islamic Research Institute and to appoint a Commission to make recommendations for bringing existing law into conformity with the injunctions of Islam. These provisions were never carried out. Apart from these provisions, India - and, until 1958, Pakistan - adopted parliamentary systems of the British type, and derived so many sections from the written constitutions of America, France, Ireland, and Canada. Sir Ivor Jennings remarks: 'It is unlikely that for some time to come any of the Asian countries of the Commonwealth will evolve new political forms. Though their potential may be great their present capacity for innovation in any field of culture is small.'<sup>1</sup> It may be added that most Western countries have not shown any great capacity for formal constitutional innovation, being mainly content to ring the changes between parliamentary and presidential forms, both in many ways inheritances of British constitutional experience, with occasional odd amalgamations of the two as in de Gaulle's France. American-type federalism seems to have been a real innovation, but that was nearly two hundred years ago.

Let us now turn to examine the constitution-making

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1. Sir I. Jennings, The Commonwealth in Asia, p.57.

processes in four countries: America and France, representing the old democracies in the West, Turkey, representing the Middle East, and Japan, representing Asia; to see how far their constitutions reflected the indigenous tradition, and how far they did borrow from their colonial masters (as in the case of America), in the case of France, came under the influence of British and American constitutional theories or in the case of Turkey and Japan, borrowed from the constitutions of Western Europe.

### America

The Constitution of the United States of America (1787) is the oldest written national constitution in the world. The history of the American Revolution and of the establishment of the American Constitution have provided a model for those who believe in the abilities of men to govern themselves and to create their own institutions in the light of their own experience. There was the first deliberately designed constitution for a large political system. The framers did not go out of their way to invent political forms. Some of them were students of Vattel, Montesquieu, and there was the supposed influence of other continental writers, such as Rousseau, or even of English thinkers, such as Burke, Harrington, Locke, and Blackstone. They drew upon European sources: such sources were the common law, the principles of Magna Carta and the Bill of Rights. In the main, this monumental heritage had passed to America far back in colonial days, and at the time when the national constitution took shape, was already deeply embedded in the constitutions, laws, and usages of the states. The thirteen British colonies that were to form the nucleus of the new United States all

enjoyed some form of representative institutions. The new instrument grew out of the political life of Americans themselves in the colonial and revolutionary periods. John Dickinson expressed this very succinctly in the course of the debates, when he said: 'Experience must be our only guide. Reason may mislead us.'<sup>1</sup> The father of the constitution boasted, America 'reared the fabrics of government which have no model on the face of the globe. They formed the design of a great confederacy, which it is incumbent on their successors to improve and perpetuate.'<sup>2</sup>

By 1787 not all Americans were willing publicly to admit that the models they should seek to follow were those of the country whose rule they had but lately thrown off. Hamilton, it is true, declared roundly that he believed the British government to form 'the best model the world ever produced.'<sup>3</sup> John Dickinson extolled the virtues of limited monarchy, and Madison those of the House of Lords.<sup>4</sup> But James Wilson believed that British Government could not supply the Americans with a model, since the social structure of the country provided it with no basis and 'the whole genius of the people' opposed it.<sup>5</sup> And Charles Pinkney while admitting that he too thought the British Constitution 'the best constitution in existence', declared that it was one that would not and could not be introduced into America (for many centuries).<sup>6</sup> But despite the warning from Elbridge Gerry that 'maxims taken from the British constitution were often fallacious' when applied to the American situation, which was 'extremely different',<sup>7</sup> the members of the convention continued to argue about the details of the proposed new constitution, largely

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1. M. Farrand, The Framing of the Constitution of the United States, p.204.
  2. M. Beloff (ed.), The Federalist, p.66; J. Madison.
  3. M. Farrand (ed.), The Records of the Federal Convention of 1787, vol.i, p.299.
  4. Ibid., pp.92, 288-9.
  5. Ibid., p.153.
  6. Ibid., p.398.
  7. Ibid., p.50.

by analogy with that of Britain. Indeed, save for the small republics of the Netherland and Switzerland, there was nowhere else to look. 'The people of the colonies', declared Edmund Burke, 'are descendants of Englishmen... They are therefore not only devoted to liberty, but to liberty according to English ideas, and on English principles.'<sup>1</sup> The founding fathers, the practical politicians, knew how infinitely difficult a business government is, desired no bold experiments. They preferred so far as circumstances permitted, to walk in the old paths, to follow methods which experience had tasted. Accordingly they started from the system on which their own colonial governments, and afterwards their state governments, had been conducted. The British Constitution became a model for the new national government. They created an executive-the President-on the model of the state Governor, and of the British Crown. They created a legislature of two houses - Congress - on the model of the two houses of their state legislatures, and of the British Parliament. And following the precedent of the British judges (irremovable by the Crown and Parliament combined) they created a judiciary appointed for life, and irremovable save by impeachment. As James Bryce remarked: 'The American Constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove. There is little in that Constitution that is absolutely new.'<sup>2</sup>

Besides the borrowed institutions and procedures, there was of course much in the constitution which was pure and ingenuous innovation. This was true especially of many of the federal provisions

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1. E. Burke, "Speech on Conciliation with America," 22 March 1775, in Max Beloff (ed.), The Debate on the American Revolution, p.206.
  2. J. Bryce, The American Commonwealth, vol.i, p.35.



governing relations among states and between them and the central government. But perhaps the most important constitutional novelty of the American founding fathers was Article V, which sets forth the procedure for amending the constitution. Article V provided the solution to the most perplexing of all constitutional problems, the problem of combining stability with adaptability, permanence with flexibility. Unwritten constitutions do not face this problem. It is peculiar to written ones, especially when they are new. Both permanence and flexibility were further buttressed by another, more famous innovation of the founding fathers, 'the rights of the courts to pronounce legislative acts void, because contrary to the constitution', which Hamilton explained in no.lxxviii of the Federalist Papers.<sup>1</sup>

#### France

The English Revolution of 1688 established the sovereignty of parliament as the central operative principle of British government. The American Revolution of 1776, created in the written constitution of the federal government, the backbone of the American democratic system. The French Revolution of 1789 declared that no form of public authority is legitimate, unless it 'emanates expressly from the nation', i.e., the people. There was the influence of Rousseau's theories as expressed in the new nationalism. There was the political individualism of the physiocrats. The nationalism which the French Revolution engendered led everywhere to a serious intensification of political struggles. Wars which had hitherto been dynastic, almost private affairs, now became the struggle of great masses rising to the new nationalist

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1. M. Beloff, The Federalist, p.397.

battlecries. France set the example of written constitutions in Europe. All Continental European ideas of liberty, of popular sovereignty, of the republican form of government are either directly derived therefrom or owe France a heavy debt. France has herself certainly been influenced by England: but where British influence has extended to the West of Europe, the impact has on the whole been indirectly from Britain, directly from France. France served as the world's chief laboratory for political experiment. The people tried one form of government after another, one constitution after another - only to find themselves disillusioned. It has often been said that, since 1789, France has changed her constitution on an average every twelve years. It was a commonplace saying in England that Frenchmen had neither political sense nor sagacity, and that they did not deserve a stabilized government because they were too philandering in their political fidelity to give any form of government a fair chance.

The French Revolution was an essentially middle class protest against the whole structure of the ancien régime in France, with its framework of political despotism, its gross economic inequalities, its texture of privileged social classes. The Revolution asserted that the essence of the democratic ideal is the 'sovereignty of the people', with its three-fold slogan of 'liberty, equality and fraternity.' In August 1789, the famous Declaration of the Rights of Man and the Citizen was formulated. Several authorities have offered impressive evidence that it was in fact modelled on its American counterpart.<sup>1</sup> The Declaration was a denial of the arbitrary power and a protest against the abuses of the ancien régime. In September 1791, a written constitution was

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1. See H.E. Bourne, "American Constitutional Precedents in the French National Assembly", American Historical Review, April 1903, pp.466-86; J.H. Robinson, "The French Declaration of the Rights of Man of 1789", Political Science Quarterly, December 1899, pp.653-62; C. Brinton, "Declaration of the Rights of Man and the Citizen", Encyclopaedia of the Social Sciences, vol.v, pp.49-51.

drawn up. The Declaration formed the Preamble of the Constitution of 1791 and expressly recognised in subsequent documents, including the present Constitution of the Fifth Republic. The National Assembly which drafted the first Constitution of France (1791) was actually nothing but the so-called Third Estate of the Estates General (états généraux), a quasi-legislature of medieval origin. The constitution was a curious mixture of monarchical and republican principles. An attempt was made to apply the principles of national sovereignty and of the separation of powers. French constituent bodies, the long line of which includes primarily the National Constituent Assembly of 1789 - 1791, the Convention of 1793, the National Assembly of 1848, the Bordeaux Assembly of 1871, and the two Constituent Assemblies of 1945-1946, are all alike, and differ from American constitutional conventions, in that they have served as basic governmental institutions of the country at the same time that they have been engaged in drafting a constitution for the future government of the nation.

Since the Revolution of 1789 that overthrew the Monarchy (the ancien régime) and proclaimed a Republic, France has had sixteen different constitutions that have created many forms of government. The Revolution led to a Constitutional Monarchy (1789-92), which became a Republic (1792-95), which in turn gave place to the Directorate and the Consulate (1799), with Napoleon as the First Consul. In 1804, France was transformed into an 'Empire', and Napoleon became the 'Emperor', governing by proclamations and executive orders. In 1814, the Empire was brought down by an alliance of most of the major countries of Europe, and the Bourbon kings were restored. A 'constitutional charter' of 1814 was notable chiefly for attempting to transplant into France the cabinet or parliamentary system of government on the model of Britain. The king was left with

more powers and parliament was more restricted; but ministers were supposed to be responsible. The franchise was extended but it was still very restricted. The Bourbon kings gave way after the Revolution of 1830 to the July Monarchy, the Orleanist branch of the Bourbon dynasty that ruled until 1848. The Revolution of 1848 again discarded the Monarchy in favour of a new Republic (the Second) based on universal male suffrage. This time the constitution showed, unmistakably, the influence of America. Powers conferred upon the President were quite comparable with those in the United States; and while ministers were provided for, their status was left so vague that no one could tell whether or not they were to be regarded as responsible. Certainly the tendency was to swing away from the English cabinet system in the direction of the presidential system prevailing in the United States. The nation might not want a king, but it must have a strong executive - one that would supply the active leadership in which kings often failed. The President, Louis Napoleon, abolished the Republic in 1851 to introduce the 'Second Empire', in which he governed (as Napoleon III), as his uncle had done, by executive proclamations, although he did seek popular support through plebiscites.

The defeat of Napoleon III in the Franco-Prussian War (1870) spanned another crisis and a new republican constitution (the Third Republic) was introduced in 1875. The constitution drafters in 1875 had been inspired both by French royalist tradition and by the example of the British parliamentary monarchy; they had designed their makeshift constitution to serve as the framework for a restored monarchy in France. The structure proved flexible enough, however, to adapt itself to republican needs; and so France unintentionally furnished the world with history's first example of the parliamentary republic - a combination of republicanism and parliamentarism which gave to France the longest-lived

governmental system in the period after the Old Regime. The essence of the parliamentary system lay in the dominant role of the Chamber of Deputies, which could overthrow or replace the executive organ (the cabinet) at will. In contrast to the so-called presidential form of government, there was no attempt at a clear-cut separation of powers, with the executive and legislative branches both stemming directly from the people and kept in equilibrium by a series of checks and balances. At most, there was a separation of functions between the executive and legislative. The seat of national sovereignty, the source of executive authority, lay in the Chamber of Deputies alone. Between 1875 and 1940, practice altered certain aspects of the government's operation. The most significant change was a relative weakening of the executive organ in favour of the legislature. The executive's chief weapon against the legislature - the right to dissolve the Chamber and to order new elections fell into complete disuse. The decay of dissolution and the multi-party system did much to produce that famous French phenomenon, cabinet instability. During the sixty-five-year life of the Third Republic, France had a sequence of 102 cabinets, which scarcely made for executive authority or strength. It was calculated that from 1875 to 1920, governments lasted an average of less than ten months each; but that from 1920 to 1940, the speed of rotation just about doubled.<sup>1</sup> Once the Republic got under way, no party ever approached a clear majority in the Chamber; a coalition from two to a half-dozen groups was always necessary in order to form a cabinet, and the life of such a coalition was at the mercy of each component group. The parties themselves were fluid and ill-disciplined, which added to the

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1. See G. Wright, The Reshaping of French Democracy, pp.8-9.

structural instability of cabinets. The Third Republic collapsed when France was overrun by the Nazi armies at the beginning of World War II (1940). The unoccupied part of France was then ruled by the so-called 'Vichy Regime' (1940-1944), in which all powers were concentrated in one man, Marshal Pétain, who was granted broad authority by the constitutional convention that met on July 10, 1940, in the wake of the French defeat. A great part of the two years since liberation had been spent in the effort to establish a new governmental system which would correct the weakness of the pre-war regime and would start France on the road to stability and prosperity. After General de Gaulle's triumphal return to Paris, the government of France was essentially a dictatorship by consent. The provisional Fourth Republic began its career as a presidential or even an authoritarian regime rather than a parliamentary one. This fourteen-month experiment serving as the immediate background for the constitutional debates, could hardly fail to exert a direct influence - either positive or negative - on the permanent structure of the Fourth Republic. The Constitution of the Fourth Republic was approved by the people in a special referendum in October 1946. It lasted for 12 years and was radically overhauled in the summer of 1958. In September 1958, the French voted overwhelmingly in favour of a new republican constitution - the Fifth Republic - in which substantial powers are invested in the President.

The French since the Revolution of 1789 have not agreed on the political system they want. They have alternated between a Monarchy, a Republic, and an Empire, in which broad powers are delegated to one man. It has experimented with many forms of government, but none of them developed the respect and deference that the British pay to their parliamentary system and their monarch.

The French system of the Third and of the Fourth Republic

provide obvious examples of the problems which arise when a too-powerful legislature, torn by a multi-party system, results in an unstable executive incapable of providing consistent and effective leadership. The Constitution of the Fifth Republic is designed to correct this imbalance. The constitution has been variously described as 'tailor-made for General de Gaulle', 'quasi-Monarchical', 'quasi-presidential', 'unworkable', and 'ephemeral'.<sup>1</sup> It is a hybrid, an attempt to combine two constitutional principles - a half-way house between France's traditional parliamentary regime and a presidential system, the possibility of whose peaceful co-existence has yet to be proved after several years of experience. The drafting of the Constitution of the Fifth Republic was the responsibility, not of parliament but of the government and was done in private. A small ministerial committee presided over by General de Gaulle drew up a first draft which was approved by the cabinet and then submitted to a consultative committee, mainly composed of members of parliament, and to the Conseil d'État, before being finally approved by the cabinet. The constitution passed into law by resorting directly to a popular referendum in September 1958, without a vote on the part of parliament as such. The head of state and the head of government remain in theory distinct. The Prime Minister appoints and dismisses his colleagues and is responsible to parliament (in practice to the National Assembly only). The two houses of parliament are democratically elected. The judiciary is independent. The Prime Minister has both procedural and constitutional means of dominating the assembly, and parliament's role is considerably reduced. Presidential power is greatly enhanced. To ensure more

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1. The quotations are from D. Pickles, The Fifth French Republic, p.26.

governmental stability than the parliamentary system had provided under either the Third or Fourth Republic the head of state should be a representative of the nation rather than of parliament - not an impartial figure head (unlike the Presidents of the Third and Fourth Republics) but 'a national arbiter far removed<sup>from</sup>/political struggles' (de Gaulle's phrase).<sup>1</sup>

In many ways, the Fifth Republic is certainly decidedly different from its two predecessors. In many ways, it is new and original, and it makes a fresh attempt to solving one of France's greatest problems: how to combine democracy with authority, to guarantee the vast freedom to which Frenchmen are accustomed while giving them orderly, responsible and stable government. The future alone will decide whether the Fifth Republic has succeeded in doing this. According to a qualified observer, the de Gaulle regime represents a new victory for Bonapartism - direct communion and communication between a national hero and the nation at the expense of the nation's representatives.<sup>2</sup> The instability of the voters who shift their allegiances all over the political chessboard from election to election and of the party system which reflects these voters' views highlight both the necessity of creating an independent executive and the dilemmas which faces it.

### Turkey

Turkey, unlike the Indo-Pakistan sub-continent, never fell under direct European rule; she nevertheless experienced many of the same processes as they did. Between 1826 and 1876 many changes were accomplished and there was real progress in

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1. Quoted in S.H. Hoffmann, "The French Constitution of 1958: 1. The Final Text and its Prospects," American Political Science Review, June 1959, p.341.
  2. Ibid., p.348.



passing from a despotic to a limited monarchy. Liberal and democratic ideas, chiefly of British and French origin, deeply affected important groups of Turkish intellectuals. In December 1876, an Ottoman Constitution (known as Midhat Constitution) was proclaimed largely modelled on the Belgian Constitution of 1831. Unlike the Belgian Constitution, however, it was not passed by a constituent assembly, but promulgated by the sovereign power - Midhat Pasha, the Grand Vezir. Bernard Lewis observed that the constitution combined 'the advantages of being liberal, monarchical, and written in French. But the Ottoman Empire was not Belgium', and the (Belgian) constitution 'adapted into Turkish, was inevitably irrelevant, unrelated to Turkish conditions, and ultimately unworkable.'<sup>1</sup> The experiment did not last long. In February 1878, Sultan Abdul Hamid dissolved the chamber, and for the next thirty years Turkey was ruled by an all-pervasive autocracy. But the spirit of constitutionalism was not dead. In 1908, the Young Turk Revolution restored the constitutional regime. The second Turkish constitutional regime lasted longer than the first, but it too ended in failure. In the new parliamentary and administrative apparatus that followed the Revolution, new methods of government were devised and put to the test. It was the most important step in the country's development into a Western state. Ideologically, absolutism was permanently buried. The ordinary people, though not yet an active participant, made his first appearance in the political arena at this time. In the previous constitution, the Sultan had retained his theoretical status as the source from which all power flowed. In 1908, he submitted himself to the supreme authority of the constitution.

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1. B. Lewis, The Emergence of Modern Turkey, p.356.

In 1876, parliament had sworn allegiance to him; in 1908 he swore allegiance to parliament. The principle of government by law grew into an intrinsic part of Turkish political thought. Whether representative of the people or not, parliament was incarnated as a symbol of legitimacy on which all political power rested. But the new experiment like the previous one had degenerated into a kind of military oligarchy of the Young Turk leaders, which ended only with the defeat of the Ottoman Empire in the First World War.

During the years of defeat and occupation things looked very bleak indeed. Then, with the military and diplomatic victories of the Kemalists, a new phase began in Turkey's political evolution. In 1923, Turkey became a republic, and in April 1924, an entirely new constitution was accepted by the Grand National Assembly. The Turkish Constitution of 1924 was the first truly liberal constitution to be adopted by a Middle Eastern country, it represented the formal break with Islam and the adoption of the Western principles of the secular state. The state once dynastic, multi-national and religious, was rebuilt upon nationalistic, secular and republican lines. The assumption of legislative authority curtailing the absolute power of the ruler clashed with historic Islamic concepts. It is this factor, more than any other aspect of nationalism, that began the disintegration of Islamic political system. Instead of nationalism being the servant of Islam and providing it with a new and vigorous political form, Islam has increasingly become the servant of nationalism. Ataturk's purpose was to liberate and to elevate Islam from its position of being a tool of politics.<sup>1</sup> The office of the Caliphate was abolished, the Ministry of Religious Affairs (Seriat) was disbanded, the historic office of Sheikh of

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1. See Lord Kinross, Ataturk: The Rebirth of a Nation, pp.384-5.

Islam (Seyh-ul-Islam) ceased to exist, and all religious schools were transferred to the secular arm. The religious courts (Seriat) which still administered the laws relating to family and personal matters, such as marriage, divorce and inheritance, were closed, and, a Civil Code based on that of the Swiss model was formulated.<sup>1</sup> Article 2 of the 1924 Constitution stated that Islam was the religion of the Turkish state - a formula retained with appropriate modifications since the first Ottoman Constitution of 1876. In April 1928, this clause was deleted from the constitution. In doing ~~these~~, Turkey did not completely abandon Islam, but attempted to 'nationalise' it in the same way that English Reformation 'nationalised' the medieval Catholic heritage by creating a separate Church of England. Indeed, this historic precedent was cited by apologists of the Turkish Revolution in explanation of the place of Islam in the new Turkey.<sup>2</sup>

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1. Lord Kinross, Ataturk: The Rebirth of a Nation. pp.385-6; Lewis, op. cit., pp.258-9, 260.
  2. This lead has not been followed in the Arab World. The Arab states (such as Saudi Arabia, Yemen and Afghanistan) are still formally Islam, with Islam as the state religion. Shariah has continued to have a place in the national legal system and Islamic institutions play an influential role. Yet in most of the Arab World Islam is steadily losing power as a political form and increasingly serves as the facade behind which the forces of nationalism operate. Abdul Nasser is a good example of this. While Islam is mentioned in his Philosophy of Revolution, it plays a much less important and specific role in Egyptian politics. Although Islam is thus increasingly subservient to nationalism, in many specific situations it still exerts important political pressures. Islam may have ceased to be a decisive influence in shaping the form of the state, but it is certainly not politically dead among the masses. Even in secular Turkey political leaders at all levels have found it expedient to maintain an identifiable Islamic loyalty in their appeal for the village vote. See J.S. Badeau, "Islam and the Modern Middle East," Foreign Affairs, October 1959, pp.66-9.

In these respects, the Turkish Constitution was the most revolutionary constitution of the Muslim Middle East. Until its drastic modification in 1961, it was subjected to only few and minor amendments. Like other constitutions later adopted by most Middle Eastern countries, the Turkish Constitution was copied almost verbatim from Western European models chiefly the French and the Belgian. But unlike most other fundamental laws of the Middle East, it was carefully adjusted to avoid placing too much power in the executive branch of the government and concentrating real authority in the National Assembly. This was perhaps due to Ataturk's realisation that, in order to safeguard the permanence of the nationalist state, which was created primarily by the formal transfer of sovereignty from the Caliph to the nation, the nationally elected assembly must be made the repository of all authority and power (Articles 4, 6 and 7). The President of the republic was elected from among the members of the indirectly elected unicameral legislature - the Grand National Assembly. The President chose a Premier who formed a cabinet whose membership was subject to the approval of the Assembly. Cabinet ministers were selected from deputies in the Assembly and were collectively as well as individually responsible for the conduct of the government. The constitutional framework had strong similarities to that of the Fourth Republic of France. The President could be restricted to a ceremonial figurehead, the real executive power resting with the Prime Minister and his cabinet.

Ataturk, through the six principles, known as 'Kemalism' - republicanism, nationalism, populism, étatisme, secularism and revolutionalism - clearly hoped to create a new political network. The regime of Ataturk, failing in its two experiments with a tolerated opposition, had ended as the personal autocracy of the head of state. The Turkish system, though Western in form, was

Eastern in practice. It may be argued that Ataturk and his Revolution provided the prototype of the subsequent take-over by the military junta in other Muslim countries in the Middle East.

In May 1960, Turkey shifted into a continuing military situation. Soon after taking the reins of power the military government assured the country of its dedication to democracy. General Cemal Gursel, the head of the provisional government, declared that the purpose and the aim of his administration was to bring the country with all speed to a fair, clean and solid democracy.<sup>1</sup> The 1961 constitution-makers looked to the West for models, as had their predecessors. Features were taken over, almost verbatim in several cases from the American, French, German, and Italian Constitutions.<sup>2</sup> The new constitution, which was drafted by a group of Istanbul University Professors, was approved by the Constituent Assembly in May 1961, and accepted by a popular referendum in July 1961. The primary task of the constitution-makers was to reduce the possibility of an unlimited parliamentarism which had paved the way to a party dictatorship. To accomplish this, differences between the chambers in the new bicameral legislature were provided both in method of election and in length of terms of office, with the hope of avoiding domination by the same party in both chambers. The constitution emphasises fundamental rights. It establishes a constitutional court, seeks to protect the independence of the judiciary, the civil service and the universities. Finally, proportional representation in national elections replaces the majority system to protect against the pressures of a single party in a landslide. Although a civilian

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1. N. Eren, Turkey Today - and Tomorrow, p.38.

2. W.F. Weiker, The Turkish Revolution, 1960-1961, p.65; Eren, op. cit., p.31.

~~a civilian~~ constitution was restored, the sentiment persists among younger military officers that Turkey is not politically mature enough for parliamentary politics, and that only an authoritarian regime under the military regime can accomplish the task of national development.<sup>1</sup> The Turkish experiment with Western political institutions appears to prove the contention that Western institutions, as introduced in the Middle East, were doomed to failure any way, precisely because they were imposed from above and were not the product of grassroots democracy.

### Japan

Like the American Constitution of 1787, the Japanese Constitution of 1889 was not a sharp break with the past. Discussion of constitutional progress had begun as far back as 1867; and immediately following the Restoration, Meiji statesmen began the task of drafting projects of a constitution. There is one very marked contrast between the political history of Japan in the first twenty years after the Restoration and that of Britain and America. In those countries, it was parliament which produced political parties, but in Japan it was political parties which produced parliament.<sup>2</sup> The opposition parties pressed upon the government the adoption of political forms which most nearly resembled those of English origin, and they freely invoked the support of English and American theory. Unlike the current experiment in democracy, which, in the main, was initiated and encouraged from above by the occupation, the earlier attempt was essentially an indigenous movement. Japan was the first Asiatic country to adopt a constitutional

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1. D.A. Rustow, "Turkey: The Modernity of Tradition", in L.W. Pye and S. Verba (eds.), Political Culture and Political Development, p.187.

2. G.B. Sansom, The Western World and Japan, p.368.

form of government. Japanese constitution-makers paid careful attention to Prussian political theory and turned to Prussian advisers for guidance in drawing up the document which became the Constitution of 1889. Emissaries were even sent to America but they rejected the American model as unworkable. The German Constitution offered a suitable pattern for adaption to Japanese needs. As Sansom points out, the government for their part was interested in examining 'the practical working of the systems of government in use in the leading countries of the West, in order to ascertain which was most appropriate to the needs of Japan.'<sup>1</sup> More than twenty German advisers and experts were said to be employed in connection with the drafting of the constitution.<sup>2</sup> The constitution was drafted secretly and was handed down from above (granted by the Emperor as a 'gift' to the people) and not arrived at through free discussion in a constituent assembly. This secret procedure was said to have been suggested by Harvard-educated Kaneko Kentaro (one of the three men most intimately involved in the drafting work), who had discovered that the deliberations of the American constitutional forms had been in secret.<sup>3</sup>

Japan has traditionally been a theocratic-patriarchal state in which the Emperor occupied the position of Father God. The Meiji Constitution accurately reflected the Japanese view when it declared that 'the Emperor is sacred and inviolable' and that 'the Emperor is the head of the Empire, combining in Himself the rights of sovereignty' (Articles 3 and 4). The framers of the constitution appeared to have envisaged not only the identification

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1. Sansom, op. cit., p.380.

2. N. Ike, The Beginnings of Political Democracy in Japan, pp.117-f.n.

3. H.S. Quigley, Japanese Government and Politics, p.41. See also C. Yanaga, Japan since Perry; G.M. Beckmann, The Making of the Meiji Constitution, pp.82-3. (pp.170-1).

of the Emperor with the state, but also his deification. Article 1 provided that the Empire of Japan 'shall be reigned over and governed by a line of Emperors unbroken for ages eternal.' In other words, the customs of the people are stronger than constitutions and political theories. The constitution was essentially a document embodying both spirit and substance that were distinctly Japanese in character but neatly put up in a Western garb - a compromise between feudal-based authoritarian tradition on one side and Western experience on the other.<sup>1</sup> It was in effect for a period of 56 years and about 5 months. A Japanese observer concluded that only three Articles in the Japanese document viz., 1, 31, and 71, might be regarded as wholly original.<sup>2</sup> The remaining Articles were copied from various foreign sources.

The constitution invested supreme political power in the person of the Emperor. It provided for a bicameral system of legislature in which the upper house was definitely aristocratic and intended as a check against the lower house. The authority of the Diet was circumscribed and the electorate was kept small by high property qualifications. While the separation of powers was carried out in form, the executive branch of the government was more powerful than the legislature. The doctrine of judicial review was not adopted, and the Privy Council rather than the Supreme Court was entrusted with the function of passing on the constitutionality of laws and administrative actions.

The Japanese Constitution of 1946 bears on almost every page the unmistakable imprint of its essentially Anglo-Saxon origin. Whereas the constitutions of Prussia and other German states

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1. K. Colegrove, "The Japanese Constitution," American Political Science Review, December, 1937, p.1049. See also Beckmann, op.cit., p.95.
  2. H.S. Quigley, op.cit., p.44; P.M.A. Linebarger, D. Chu, and A.W. Burks, Far Eastern Governments and Politics, pp.364-5.



of the early 1880's were the models used by Meiji statesmen, American and British principles are dominant in the present constitution. The new constitution is technically a revolutionary document in that the Meiji Constitution had been issued by the Japanese Emperor on his own divine authority whereas the new constitution is issued by the Japanese people beginning with the quite un-Japanese phrase, 'Nihon Kokumin Wa...' ('We, the Japanese people...'). <sup>constitution had been issued by a recognisedly</sup> In other words, the former/'heaven-descended' king and the new one by a reluctantly democratic people under the orders of a foreign occupation. The Preamble states that 'sovereign power resides with the people'. The constitution provides for Japan a curious amalgam of the American and British concepts of government. The Emperor has been stripped of all power, theoretical as well as actual, and left simply as 'the symbol of the state and of the unity of the people.' A cabinet on the Westminster model has been established. The Diet, with both houses popularly elected, is declared 'the highest organ of state power and... the sole law-making organ of the State' (Article 41). The upper house is clearly subordinated to the lower. The cabinet is expressly responsible to the Diet. Article 66 clearly demonstrates the subordination of the executive power to legislative authority. The lack of a strong continuing executive is obviously borrowed from the Third French Republic and is in marked contrast to the older Japanese system.

Some went so far as to favour the complete abandonment of the new constitution on the grounds that it was not a Japanese product but a Western device imposed on the Japanese people during a period of occupation when they had no choice, but these were apparently a minority.<sup>1</sup> Internal evidence clearly indicates that the new constitution was a product, in the main of Occidental, not Japanese

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1. H. Zink, Modern Governments, p.728.

draftsmen.<sup>1</sup> It is quite apparent not only from the concepts embodied in the document but from the Preamble, which has been couched in a language highly suggestive of the Preamble to the Constitution of the United States, the Declaration of Independence, and the Atlantic Charter. The Bill of Rights and the doctrine of judicial review of constitutionality through a new Supreme Court constitute innovations of peculiarly American nature. One writer described it as a 'textbook constitution',<sup>2</sup> having little relevance to the traditional and dominant political aspirations or practices of Japan, hopelessly unsuited to the political ideals or experience of the vast majority of the population. 'A hollow but elaborate facade modelled after an idealized version of Anglo-American political institutions was hastily patched together.'<sup>3</sup> The result was 'an enormous gap between political fact and constitutional fiction.'<sup>4</sup> The Japanese people may or may not live up to its specifications, but at all events it set their feet on a political pathway which they had never trod.

From this analysis of the constitution-making processes of different countries it becomes clear that whether democracy is imposed from above or fashioned from below, the people have to pass through many trials and conflicts before any kind of workable democracy is attained. We can conclude with R.M. Maciver thus: 'Democracy is a form of government that is never completely achieved... Democracy grows into <sup>its</sup> being. There may be centuries of growth before we can say: "Now this state is a democracy."<sup>5</sup>

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1. H.S. Quigley, "Japan's Constitutions: 1890 and 1947", American Political Science Review, October 1947, p.874. See also H.S. Quigley and J.E. Turner, The New Japan: Government and Politics, p.118.
  2. R.E. Ward, "The Origins of the Present Japanese Constitution", American Political Science Review, December 1956, p.1001.
  3. Ibid., p.1010.
  4. Ibid.
  5. R.M. Maciver, The Web of Government, p.175.

## CHAPTER II

## CONSTITUTIONAL DISCUSSIONS, 1919-1935.

The First World War had a remarkable effect on the attitude of both the rulers and the ruled. In India there was a great quickening of political consciousness. The agitation of the Indian National Congress and the Home Rule movement led by Tilak and Mrs. Besant created considerable enthusiasm among the Indian masses. These various reasons led to a significant change in British policy and outlook in 1917. On August 20, 1917, the Secretary of State for India, Edwin Montagu, made a historic announcement in the House of Commons. He declared: 'The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire.'<sup>1</sup> Montagu came over to India, had a direct contact with the Indian leaders, and in conjunction with Chelmsford, the Viceroy, a joint report known as the Montagu-Chelmsford Report was published in 1918. In the words of the report, 'The announcement marks the end of one epoch, and the beginning of a new one. Hitherto... we have ruled India by a system of absolute government, but have given her people

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1. Parliamentary Debates, Commons, 5s., vol.xevii, col.1695.

an increasing share in the administration of the country and increasing opportunities of influencing and criticising the Government.<sup>1</sup>

Long before the publication of the Montagu-Chelmsford Report and the reforms of 1919, a powerful combination of intellectuals and politicians in England, known as the Round Table,<sup>2</sup> had been considering the desirability of including India in a possible federation of the British Empire. Lionel Curtis, 'the Prophet' of the group, tells us how his thinking was influenced by William Morris, a prominent Indian civil servant, while on their visit to Canada in 1909. Morris' idea of 'self-government' as 'the only intelligible goal of British policy in India' attracted him. Curtis wrote: 'So far ~~as~~ I had thought of self-government as a Western institution, which was and would always remain peculiar to the peoples of Europe ... It was from that moment that I first began to think of "the Government of each by each, and of all by all" not merely as a principle of western life, but rather of all human life, as the goal to which all human societies must tend ... I began to think of the British Commonwealth as the greatest instrument ever devised for enabling that principle to be realized ... And it is for that reason that I have ceased to speak of the British Empire ....'<sup>3</sup> A study group of the Round Table, which met regularly once a fortnight in London during the autumn of 1915, was attended by Curtis, R. Coupland, Sir William Duke and others. The group agreed that the attitude taken by Indians in the war had proved that the country was riper than had been supposed for

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1. M/CR, p.6.

2. The prominent members of the Round Table were: L.S. Amery, R. Cecil, V. Chirol, R. Coupland, L. Curtis, P. Kerr, W. Morris, Lord Milner, and P. Duncan. A quarterly The Round Table was started with P. Kerr as editor in 1910.

3. L. Curtis, Dyarchy, pp.41-2.

further constitutional reforms.<sup>1</sup> The only conceivable goal, it was recognised, was self-government, and self-government meant the responsible government for India within the Commonwealth on the dominion model.<sup>2</sup> It was obvious that India could not advance by one step to full responsible government and that her progress toward it must be by gradual stages. It was realised that any further advance on the lines of the Morley-Minto reforms would give the electorate power to paralyse government at every turn, but not the power and the responsibility of conducting government for themselves.<sup>3</sup> The essence of the problem was, therefore, to find a method of introducing true responsible government, in a limited and manageable field of administration, which could be contracted or extended in accordance with the practical results attained without imperilling the structure of government itself. This method was suggested in a memorandum prepared for the group by Sir William Duke, a member of the Executive Council in Bengal.<sup>4</sup> The word 'dyarchy' was used for the first time by Curtis in his Letter to Mr. Bhupendranath Basu, a member of the Indian legislative council, on April 6, 1917.<sup>5</sup> The word was coined by Sir William Meyer, a member of Viceroy's council.<sup>6</sup> Curtis himself wrote: '... the principle of dyarchy was evolved by much anxious thought and inquiry brought to bear on a great problem by a large number of people possessed of a knowledge and experience ... My own part in the matter was to build a continuous channel in which information drawn from a large number of

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1. L. Curtis, Dyarchy, pp.xx-xxi.

2. Ibid., p.xxii.

3. Ibid., pp.xxii-xxiii.

4. See 'The Duke Memorandum' in ibid., pp.1-37, cf. E. Montagu, An Indian Diary, p.377. '... I think he [Duke] invented "Dyarchy".'

5. Curtis, op.cit., p.105.

6. Ibid., pp.xxxii, 105.

sources could collect.<sup>1</sup> Lord Chelmsford, the Viceroy, asked for copies of the draft scheme and they were sent to him in India in June 1916.<sup>2</sup> Montagu had also occasions to discuss privately with Curtis the merits of the scheme.<sup>3</sup> Montagu, however, claimed that their scheme had an independent and spontaneous development before he had seen Curtis.<sup>4</sup> When the Government of India Bill, 1919, was debated in the British Parliament, Colonel Yate stated in the House of Commons: '[Mr. Montagu] ... came across a man named Curtis. It was from this gentleman that he obtained the idea of the diarchy.'<sup>5</sup> Lord Ampthill said in the House of Lords: '... but for the chance visit to India of a globe-trotting doctrinaire, with a positive mania for constitution-mongering, nobody in the world would ever have thought of so peculiar a notion as that of the "Dyarchy".'<sup>6</sup>

To all concerned, 'responsible government' meant the British parliamentary system.<sup>7</sup> But Montagu suggested the word 'self-government' to the cabinet in his memorandum soon after he assumed office as Secretary of State in July 1917.<sup>8</sup> On 21 August, 1917, Montagu wrote to Chelmsford: 'It was a strange discussion. I had hoped that the word "self-government" would be used, because it appeared in everyone of your communications and because I thought it was a pity to boggle at a word so current in Indian discussion. The Cabinet in its wisdom preferred the words "responsible Government" to "self-Government". It requires a better educated man than myself to know the difference, but if it lies anywhere, "responsible Government" I should have thought, pledges more than "self-Government".'<sup>9</sup> It has been disclosed by his

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1. Curtis, op. cit., p.xx.

2. Joint Select Committee on the Government of India Bill, 1919, vol.ii, Minutes of Evidence, p.512.

3. Montagu, An Indian Diary, pp.76, 101, 141, 164, 236, 246.

4. Ibid., p.89.

5. Parliamentary Debates, Commons, 5s. vol.122, col.448.

6. Parliamentary Debates, Lords, 5s. vol.xxxviii, col.118.

7. W.H. Morris-Jones, Parliament in India, p.52.

8. The Earl of Ronaldshay, The Life of Lord Curzon, vol.iii, p.167.

9. S.D. Waley, Edwin Montagu, p.135.

biographer that Curzon had himself inserted the words 'responsible government.'<sup>1</sup> He expressed 'astonishment and dismay' when he found that he had committed himself to the very form of government in India against which, not long ago, he had warned Morley.<sup>2</sup> Curzon 'seemed to be tossing painfully on a sea of indecision' and his attitude was 'extremely difficult to understand'.<sup>3</sup> In substituting the words 'responsible government' for 'self-government', Curzon wanted to make it 'rather safer and certainly nearer' to his own point of view.<sup>4</sup> Later on Curzon wrote that the enlarged legislative councils proposed by the Government of India would constitute 'a revolution' and would 'probably lead by stages of increasing speed to the ultimate disruption of the Empire.'<sup>5</sup>

The primary purpose of the Montagu-Chelmsford Report was to justify the assumption 'that the obstacles which British statesmanship had hitherto regarded as prohibiting a parliamentary system in India could somehow or other be overcome.'<sup>6</sup> Montagu himself emphasised that 'the reasons which make self-government impossible in this country now are not really distrust or unfitness or lack of ability or want of character' but what was required was 'a growth of those conventions and customs and habits of representative government, without the acquisition of which democracy cannot stand ... It is this use of power which they must be taught, which they must learn by experience and which we cannot risk.'<sup>7</sup> The report believed profoundly that the time had come to soften 'if not overcome'

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1. Ronaldshay, op. cit., pp.167-8.

2. Ibid., p.169.

3. Ibid., p.166.

4. Ibid., p.168.

5. Waley, op. cit., p.173.

6. R. Coupland, The Indian Problem, 1833-1935, p.54.

7. Montagu, op. cit., pp.136, 134.

'the habits of generations', and 'to call forth capacity and self-reliance in the place of helplessness; nationhood in place of caste or communal feeling.'<sup>1</sup> Here is what A.B. Keith says: 'It [the report] is dominated by a complete belief in the necessity of applying to India the traditions of British democracy, ignoring the fact that India is divided by race, sect, and religion in a manner which has no parallel in those countries, mainly British, in which parliamentary democracy has been effectively worked. The idea that men should, like the average Indian peasant, remain satisfied with material interests and good government was repudiated by Montagu, who was anxiously to complete their humanity by stirring them to demand control of their destinies through the ballot-box.'<sup>2</sup> The report itself laid emphasis on certain pre-requisites to be fulfilled to make it a success in the Indian context. The authors of the report especially pointed out the basically undemocratic character of the Hindu caste system, and linking caste with communal interests, they stated in plain terms that so long as such sectional interests were paramount, 'any form of self-government to which India can attain must be limited and unreal at best.'<sup>3</sup> The communal question and Hindu-Muslim antagonism in particular, they confessed, was the 'difficulty that outweighs all others.'<sup>4</sup> They did not offer any hope that it be easily overcome. 'To our minds so long as the two communities entertain anything like their present views as to the separateness of their interests, we are bound to regard religious hostilities as still a very serious possibility. The Hindus and Muhammadans of India have certainly not yet achieved unity of purpose or community of interest.'<sup>5</sup> Though they considered the system of separate electorates as 'a very serious hindrance to the development

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1. M/CR, p.120.

2. A.B. Keith, A Constitutional History of India, 1600-1935, p.244.

3. M/CR, p.125.

4. Ibid., p.126.

5. Ibid., p.127



of the self-governing principle,<sup>1</sup> still they were unable to change the system and it was retained for the Muslims and even extended to the Sikhs.

The scheme, which became known as dyarchy, was given effect by an Act of 1919. The Act envisaged a devolution of power from English to Indian hands in the transferred field at the provincial level. The transferred departments, such as education, local government, agriculture, fisheries, public health, were now placed under ministers, who were elected members of the legislatures and responsible to those legislatures. The Governor and his Executive Council were to be in charge of the reserved subjects like law and order, land revenue, finance, etc. The enlarged provincial legislatures now contained a majority of elected members. Even at the central legislature there was a large elected element although the administration was still in the hands of the Viceroy and his Councillors who continued to be responsible to the Secretary of State. A bi-cameral legislature consisting of the Legislative Assembly and the Council of State with increased powers was established. The principle of direct election was introduced. Franchise was extended by considerably lowering the property qualifications and women were given the right to vote in all the provinces. The total male electorate for the general constituencies for the provincial legislatures was 7,414,000 and for the Legislative Assembly 984,000.<sup>2</sup> There were separate lists of provincial and central subjects and allocation of distinct sources of revenue.

The reform proposals of 1919 were received quite well at the beginning, though the Home Rulers, Tilak and Mrs. Besant, dismissed

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1. M/CR, p.188.

2. Report of the Reforms Enquiry Committee (1924), p.53.

them as 'entirely unacceptable' and 'unworthy to be offered by England or to be accepted by India.'<sup>1</sup>

Congress at its annual session at Amritsar in December 1919 passed a resolution offering support in working the reforms, so as to secure the early establishment of full responsible government.<sup>2</sup> Gandhi, who had recently emerged to the Indian political scene, was in favour of working the reforms. He declared: 'The Reforms Act ... is an earnest of the intention of the British people to do justice to India ... Our duty therefore is not to subject the Reforms to carping criticism, but to settle down quietly to work so as to make them a thorough success...'<sup>3</sup> But between May 1919 and May 1920, 'the political atmosphere of India had undergone a complete change' due to some unfortunate events, such as the unpopular Rowlatt Bill, the tragedy of Jallianwalla Bagh, the Turkish Treaty and the hostile attitude of the British civil servants towards the reforms.<sup>4</sup> All these events 'played their part in spoiling the ground for the delicate seeds of partial responsible government.'<sup>5</sup>

The non-co-operation movement led by Gandhi 'diverted for three years the main stream of political activity' and resulted 'in the abstention from any participation in the reforms of a number of leaders of Indian opinion.'<sup>6</sup> The Congress decision to boycott the dyarchy experiment reflected the negligible interest of the Congress in experience in administration at the provincial or local level. Even a section of the Congress known as Swarajists who contested the elections from 1923 onwards and formed the largest single party in most of the legislatures, refused to form ministries and continued

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1. Quoted in B.R. Nanda, The Nehrus: Motilal and Jawaharlal, p.147.

2. IAR, 1919, vol.i, p.1.

3. M. Gandhi, Young India, 1919-1922, vol.i, pp.84-5.

4. 'Kerala Putra' (K.M. Panikkar), The Working of Dyarchy in India, 1919-1928, p.29.

5. Morris-Jones, op. cit., p.55.

6. Report of the Reforms Enquiry Committee (1924), p.2.

their efforts to bring the constitutional experiment to a breakdown.

In Bengal and C.P. (where the Swarajists had an absolute majority) they resorted to a policy of wrecking the constitution from within. There were votes of no-confidence in the ministries, their salaries were refused. As a result, the emergency powers of the Governors had to be invoked and this led to a temporary breakdown of the system of dyarchy during the years 1924-30. The Governors had an exceptionally difficult task to select ministers who could command a majority of the elected members of the legislatures.<sup>1</sup> Consequently, the ministers were selected from groups whose hold on the legislatures were precarious and were kept in power with the votes of the official and nominated members. The parties within the legislatures had mostly been fluid groups, 'with kaleidoscopic changes of nomenclature, composition and leadership, have not often been anything but communal lines, and their communal character has tended to become more rather than less pronounced.'<sup>2</sup> Parties appeared as alternatives to the Congress. The Liberals with their faith in the virtues of political education contested the elections for the reformed legislatures under the political label of National Liberal Federation and subsequently formed ministries in several provinces during 1920-24 period. They tried their utmost to make the dyarchical reforms workable. They were the most distinguished and forceful ministers of the whole dyarchy period and set the pattern of local government in the following years through their programmes of development and legislation.<sup>3</sup> In Madras the non-Brahmin Justice Party was formed with the main object of fighting the old-established

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1. ISC, vol.i, p.211.

2. Ibid., p.209.

3. H. Tinker, The Foundations of Local Self-Government in India, Pakistan and Burma, p.130.

predominancy of Brahmins in the political life. Congress was identified with Brahmin domination and the Brahmin monopoly of public office. The Justice Party was able to form a ministry and made use of its power to secure favourable treatment for non-Brahmins in the matter of appointments to the government services and to the local bodies. In the Punjab Fazl-i-Husain's Unionist Party came to be identified with the landed gentry as against urban interests. The Unionist Party was a predominantly Muslim group with the sprinkling of Hindu and Sikh members. Fazl-i-Husain followed a wise policy of prescribing fixed percentages on a population basis for the three communities in the public services and in educational institutions. He was also responsible for launching a programme of rural development and local self-government. These attempts by the Liberals and others to provide an alternative to the Congress foundered partly because these moderate men were wholeheartedly supported by neither British officialdom nor by the traditionalist, conservative landlords and partly because they failed to create a solid following. When the Swarajists decided to contest the elections, between them and the landlords, the Liberals, in Chintamani's words, found themselves 'in the unenviable position of the proverbial earthen pot between two brass vessels.'<sup>1</sup>

On the British side, the provisions of the Act were not strictly adhered to. As Professor Morris-Jones points out: 'The intention of the reforms may have been to make Governors mere constitutional heads in relation to the transferred half, but in most cases this position was not established.' Governors treated Ministers

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1. Sir C.Y. Chintamani and M.R. Masani, India's Constitution at Work, p.7.

as advisors whose advice need not be taken. Moreover, any hope of Ministers developing a system of joint responsibility was discouraged by the evident preference of most Governors for dealing with Ministers separately. Again, the division of subjects was such that Ministers found it necessary at several points to carry the reserved half with them if they were to proceed with their schemes.<sup>1</sup> Coupland wrote that in Madras, the Governor (Lord Willingdon) decided to ignore the provisions of the Act and to treat his Executive Council and ministers collectively as a unitary cabinet. This policy necessarily blurred the distinction between ministers who were responsible to the legislature and Executive Councillors who were not.<sup>2</sup>

So far we have concentrated mainly on the negative aspects of dyarchy. But it has its positive aspects too. 'The reforms', in Dr. Spear's judgement, 'proved to be a solid and substantial achievement ... and worked well enough to make further advance inevitable.'<sup>3</sup> at the beginning of 1921 in the eight Governors' provinces Dyarchy was introduced/and was in force until 1937, though with varying success. Four general elections were held in 1920, 1923, 1926 and 1929-30. During the period 93 persons had experience as ministers and 121 as Executive Councillors.<sup>4</sup> In essentials the old system had been one of absolute government, administered by a trained bureaucracy. The introduction of dyarchy had a definite effect in diminishing the driving power of the members of the superior services who realised that the old possibilities of high office and power were vanishing.<sup>5</sup> It was estimated that by 1924, 345 British officials resigned before the expiration of their terms of service.<sup>6</sup> Those who could not reconcile themselves to the new conditions, had departed. Those who remained in office had to

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1. Morris-Jones, op. cit., p.57.

2. Coupland, op. cit., p.69 f.n.

3. P. Spear, India, p.356.

4. A. Appadorai, Dyarchy in Practice, p.72.

5. Keith, op. cit., p.287.

6. ISC, vol.i, p.267.

work with their political heads towards popular government. In a sense, dyarchy was really a bridge from authoritarian to popular government. The members of the services, broadly speaking, loyally co-operated with the ministers in working the reforms. There were, however, several ministers, who in their evidence before the Muddiman Committee, complained that the permanent officials did not wholeheartedly co-operate with them. A large number of evidence suggests that the members of the permanent services did not hesitate to carry out the policy which had been decided upon by the ministers.<sup>1</sup>

The critical attitude of the provincial legislatures was equally in evidence in respect of the acts of the executive, and was expressed through the motion of reduction of the annual budget, the resolution, the motion of adjournment, and the question. In Madras, during the first four years 753 motions for reduction were discussed out of a total of 3,393 motions admitted for discussion. In one province during the first three councils, the total number of resolutions received in the reserved departments was 3801, as compared with 1346 in the transferred departments. The resolutions discussed in all councils, dealt with important questions of public policy like the separation of executive from the judiciary, encouragement of temperance, the grievances of railway passengers, etc. Adjournment motions told the same story. In one province, average questions asked stood at 3,000 per year. Most of the questions dealt with the action of the police, the treatment of political prisoners, communal riots, and the alleged indifference or misconduct of officers. Besides, there were elected Standing Committees in the legislature which were in close touch with the administration and influenced the decision of the executive by the expression of views

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1. Report of the Reforms Enquiry Committee (1924), pp.28-31.

represented in the legislature.<sup>1</sup> 'Kerala Putra', who watched the working of the system from close quarters, wrote: 'In the scheme of political education, social legislation, liberalization of local government, and closer relations between the people and the administration, the work of the Reformed Constitution merits warm approval.'<sup>2</sup>

The Swarajists, in spite of their obstructionist tactics, tended everywhere in varying degrees, to be transformed into a constitutional opposition, and 'not infrequently played a useful part as keen and vigilant critics.'<sup>3</sup> In the central legislature, they took a prominent part in the ordinary business of the House.<sup>4</sup> Some of the prominent members of the party monopolised considerable portions of the supplementary questions.<sup>5</sup> They had served on Select Committees and co-operated with the government in the passage of important legislation.<sup>6</sup> As one writer observes: 'By bringing the Congress into the legislatures, even for the avowed purpose of wrecking them, the Swarajists helped to acquaint the country with the mechanism, the procedures and the traditions of parliamentary government ... It created precedents which helped the Congress to contest the elections and to accept office in 1937; it facilitated the installation of a fully-fledged representative government at the centre in 1946.'<sup>7</sup> The Simon Commission was impressed by the 'orderly conduct' of the business of the legislatures. 'We were much struck,' observed the commission, 'by the good attendance of members in the Chamber, by the high level of courteous speech, and by the respect shown to the Chair. The public galleries were well filled, and the proceedings were obviously followed with much

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1. Appadorai, op. cit., pp.82-3; 'Kerala Putra', op. cit., pp.61-2.

2. 'Kerala Putra', op. cit., p.ii.

3. ISC, vol.i, p.209.

4. India in 1923-24, pp.281-2.

5. "The Swarajists", by 'a Student of Politics', Indian Review, July, 1924, p.431.

6. P. Sitaramayya, The History of the Indian National Congress, 1885-1935, vol.i, p.280; 'Kerala Putra', op. cit., p.108.

7. Nanda, op. cit., pp.341-2.

interest ... There has been much good debating, and the Government has been exposed to considerable challenge and comment from its opponents among the elected members. ... It is much to the credit of many of India's public men that they should so rapidly have adapted themselves to these new methods...'<sup>1</sup> The commission concluded by saying that on the whole the legislatures had achieved a 'very general measure of success' and 'they have worked better certainly than many anticipated at their inception, though not entirely in the manner in which the authors of dyarchy intended.'<sup>2</sup>

The Act of 1919 provided for an inquiry into the possibilities of further constitutional advance in India every ten years. In November 1927, the British Government announced the appointment of an Indian Statutory Commission under the chairmanship of Sir John Simon. Early in 1928, when the Simon Commission was only at the beginning of its labours, the Indian leaders organised an All-Parties Conference at Delhi to draft a constitution for India. This conference appointed a small committee under the chairmanship of Motilal Nehru. The report of the committee - the Nehru Report as it came to be known - envisaged a parliamentary form of government, joint electorates and some complicated formula for the protection of minorities.<sup>3</sup> The Nehru Committee had to find an answer to one of the most vexed questions of Indian politics: the position of the minorities, and especially of the Muslim minority, in a free and democratic India. The committee frankly confessed that they could not be original. 'We have been content to follow models which have been tried and tested in other parts of the world and which even the framers of the Montagu-Chelmsford constitution professed to follow.'<sup>4</sup>

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1. ISC, vol.i, pp.216, 219.

2. Ibid., pp.219-20.

3. For Muslim reaction to the report see chapter ii.

4. All-Parties Conference: Supplementary Report of the Committee (1928), p.8.



The committee also expressed the hope that once India had been freed from foreign control, political parties would be formed on political and economic rather than religious alignments.<sup>1</sup> The constitution was framed on the basis of Dominion Status, which was 'not viewed as a remote stage of our evolution but as the next immediate step.'<sup>2</sup> The left-wing within the Congress including Jawaharlal Nehru and Subhas Chandra Bose demanded complete independence as a goal. The constitution was dominated by the tradition of unitary government established by British rule. Though the authors of the report anticipated an ultimate union of British India and Princely States, they spoke of federation as a possibility only.<sup>3</sup> There is little evidence to show that the report had received serious consideration in official circles. The British Parliament could never accept a position, said the Viceroy, Lord Irwin on January 28, 1929, which would reduce it 'to being a mere registrar of the decisions of other persons.'<sup>4</sup>

The political sentiment which was most widespread among all educated Indians was the expression of a demand for equality with Europeans and a resentment against any suspicion of differential treatment. Indians were impatient of the British 'doctrine of gradualness.' This can be illustrated by the comments of Motilal Nehru in the central legislature. Nehru declared: 'We say we are absolutely fit for self-government, as fit as you are yourself in your own island. This is what we say. Here we are occupying that position and you tell us as you would tell school boys: be good boys and you will be promoted to a higher form.'<sup>5</sup> The Simon Commission (1930) pointed out: 'Political thought in British India to-day is derived from Europe. The keen intelligence of the

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1. All-Parties Conference: Report of Committee (1928), p.49.
  2. Ibid., p.1.
  3. Ibid., pp.62-3.
  4. Speeches by Lord Irwin, vol.i, p.538.
  5. Legislative Assembly Debates, 1925, vol.vi, pt.ii, p.865.

educated Indian has been stimulated by the study of Western institutions. It is remarkable how the theories and phrases of political science as expounded in England and America have been adopted and absorbed. But the sudden impact of ideas drawn from the experience and conditions of other peoples in other climates is bound to have a disturbing effect.'<sup>1</sup> Instead of professing their faith in parliamentary government in India, the commission rather expressed a profound doubt on the suitability of the parliamentary system in India. The commission observed: 'It was in any case a difficult and delicate operation to transplant to India forms of government which are native to British soil, and what was needed was that the new institutions should have time to take root and to grow naturally. The British parliamentary system has developed in accordance with the day-to-day needs of the people, and has been fitted like a well-worn garment to the figure of the wearer, but it does not follow that it will suit everybody... British parliamentarism in India is a translation, and in even the best translations the essential meaning is apt to be lost. We have ourselves in attending debates in the Assembly and the provincial councils been more impressed with their difference from than their resemblance to the Parliament we know. While the principles and practice of the British parliamentary system are accepted by educated Indians as the best example of democracy in action, they are being applied in a country where the conditions and the mental habit of the people are very different.'<sup>2</sup>

Paradoxically enough, the commission proposed the British parliamentary system at the provincial level. 'We propose that in future the progress of these great areas [the provinces] should be entrusted to a unitary government responsible to legislatures elected on an extended franchise. Within the general plan there will be a scope

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1. ISC, vol.i, p.406.

2. ISC, vol.ii, pp.6-7.

for variation according to provincial needs and circumstances. Each of the provinces ... will be able to evolve by a process of growth and development, the form of executive and legislative machinery most suited to it. The essence of the plan is to afford to Indians the opportunity of judging by experiment in the provincial sphere how far the British system of parliamentary government is fitted to their needs and to the natural genius of the people.<sup>1</sup> The authors of the report were cautious so far as the centre was concerned. 'We do not think, however, that the British parliamentary system, with an Executive representing a single party and depending from day to day on the vote of a majority of directly elected representatives, is likely to be the model according to which responsible government at the Centre for India will be evolved. Parliamentary government of this type is not the only form which responsibility may assume. It takes different forms in different places and circumstances, and the British system cannot be transplanted at will and adopted ready made... We think that Indians have been apt to be led astray by keeping the British Parliament too closely in view ... We consider that the precedent for the Central Government in India must be sought for elsewhere.'<sup>2</sup> The distinguishing feature of the British system is that the 'Government is liable to be brought to an end at any moment by the vote of the legislature.' This arrangement has been the result of a long constitutional development. It is intimately bound up with the growth of an organised and stable party system, and depends for its success on the cohesion of elected representatives and their intimate and continuous contact with the electorate.<sup>3</sup>

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1. ISC, vol.ii, p.17.

2, Ibid., pp.17-8.

3. Ibid., p.146.

The Mongau-Chelmsford Report had only alluded to the possibility of federation and the Nehru Report had not gone much further. The Simon Report, on the other hand, assumed that federation was the only practicable form of government for India and urged that the constitutional machine should be immediately adjusted to fit into a future federation.<sup>1</sup> As to the inclusion of Princely States in a federation of all-India, the report was as cautious as its predecessor. It only recommended a consultative 'Council for Great India' representing the two parts of India. Other steps towards unity, it said, were 'as yet too distant and too dim to be entered upon and described.'<sup>2</sup>

The summoning of the Round Table Conference in London in 1930-32 to discuss the future constitution of India indicated that henceforth the political future of India was no longer to be decided by the British Parliament alone, and that India must have an equal voice in its decision. The British parliamentary system was accepted as the system of government, in the provinces and at the centre, by the great majority of delegates at the conference. But the Conservative section of the British delegates suggested that at the centre at any rate some other system might be contemplated. Lord Peel remarked: 'British Parliamentarians though we be, we have not thought that our Parliamentary methods should be transferred wholesale from

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1. ISC, pp.13-4.

2. Ibid., pp.205-6.

Westminster to Delhi. We have suggested that we might well consider for India the Swiss or American Parliamentary models and that devolution of authority from this country to India is not incompatible with a separate legislature and executive on the Swiss or American plan. We were anxious that the Central Legislature should be so composed that the tie with the Provinces should be firmly impressed on their constitution, and that while making laws for all-India they were acting as the agents and interpreters of Provinces and of States.<sup>1</sup> It evoked no response.

At the first session of the Round Table Conference the ideal of an all-India federation involving the union of British India and Princely States apparently had become a practical proposition. There was <sup>an</sup> unanimous agreement of all parties, including the Indian Princes, on the issue of federation. While the general principle of federation was accepted, it appeared that there would be grave difficulty in arranging the details, for each great interest was determined to secure the maximum of concessions as the price of co-operation. Most of the discussions at the next two sessions circled round the two difficult subjects: the federal structure and minority safeguards. The Princes were prepared for federation provided the federal government should be responsible to the federal legislature with temporary reservations.<sup>2</sup> It was felt that by such an attitude it would be possible to secure in framing the constitution a much stronger position for the states than mere numbers would give them and that at the same time they would be able in non-federal matters to secure freedom from intervention by the Crown except on definite and agreed grounds,

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1. Indian Round Table Conference, 12th Nov. 1930-19th Jan. 1931, Proceedings, p.447.
  2. Ibid., pp.32-39,

and they would expect to have an effective voice in matters of common concern which they could not secure otherwise.<sup>1</sup> On the British side the scheme was 'favoured in order to provide an element of pure conservatism in order to combat any dangerous elements of democracy contributed by British India.'<sup>2</sup> Gradually it became clear that a number of states would find it difficult to co-operate unless the political and financial inducements were pitched at a high figure.

The divergence between Hindu and Muslim opinion as to the character of the federation was reflected in their disagreements as to residuary powers. The Hindus wanted them to go to the centre, the Muslims as strong advocates of a large measure of provincial autonomy wanted them to go to the provinces. The Muslims and other minorities made it clear that they would not acquiesce in any constitution which did not contain adequate safeguards for their communal rights, particularly with regard to the system of representation. Dr. Ambedkar on behalf of the Depressed Classes advanced a new claim that they should be represented separately from the Hindu community at large. Gandhi, who represented the Congress at the second session as the solitary representative, tabled the Congress scheme for a settlement which was in the main a reproduction of the scheme of the Nehru Report.<sup>3</sup> Gandhi challenged the representative character of the spokesmen of the minorities since the non-Congress Indian delegates had not been chosen by the people but nominated by the government.<sup>4</sup>

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1. Keith, *op. cit.*, pp.296.

2. *Ibid.*, p.474.

3. See Indian Round Table Conference (Second Session), 7th Sept.1931-1st Dec. 1931. Proceedings, Appendix i, pp.64-5.

4. Indian Round Table Conference (Second Session), 7th Sept.1931-1st Dec. 1931, Proceedings of Federal Structure Committee and Minorities Committee, p.530.

But this claim was denied by the Muslims, by the Depressed Classes, and by many Hindus themselves. Over the vexed question of communal representation there was deadlock. The work of constitution-making, Gandhi urged, must go on without it and he suggested that the communal dispute might be settled by a judicial tribunal after the constitution had been completed.<sup>1</sup> The British Government settled the question of representation by the Communal Award of 1932, which accorded separate electorates for Muslims, Europeans, Sikhs, Indian Christians and Anglo-Indians. The Depressed Classes also got separate representation but the award had to be changed so far as the Depressed Classes were concerned due to the resistance of Gandhi and other Hindu leaders.

As a sequel to the conference, the British Parliament passed a Government of India Act in August 1935. This measure was most vehemently opposed by the right wing of the Conservative Party, led by Winston Churchill as a 'short sighted' and a 'wrongful Act.'<sup>2</sup> It was equally denounced by the younger Congress leaders, led by Jawaharlal Nehru as a 'slave Constitution'<sup>3</sup> and a 'new charter of bondage.'<sup>4</sup> The Muslim League, though critical of the federal part of the Act, decided that 'the Provincial Scheme of the Constitution' be utilized for what it is worth.'<sup>5</sup>

The two main features of the Act of 1935 were that, in the first place, it conceded self-government to the provinces which were to be administered by ministers responsible to elected assemblies on the British parliamentary model; in the second place, it introduced the federal system. The old tradition of unitary government was

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1. Proceedings of Federal Structure Committee and Minorities Committee, p.530.
  2. Parliamentary Debates, Commons, 5s. vol.302, col.1923.
  3. J. Nehru, The Unity of India, p.61.
  4. IAR, 1936, vol.ii, p.225.
  5. Sir M. Gwyer and A. Appadorai (~~eds.~~), Speeches and Documents on the Indian Constitution, vol.i, p.385.

abandoned in favour of a federal form of constitution under which the provinces would enjoy a large measure of autonomy. This was a great departure from the previous system of government of which the hall marks had been unity and centralisation.

There were differences within the Congress leadership whether to contest the elections or not. Eventually the Congress contested the elections 'not to co-operate in any way with the Act but to combat it and to end it.'<sup>1</sup> It obtained clear majorities in five of the eleven provinces and in the three other provinces it emerged as the largest party.<sup>2</sup> After much wrangling Congress governments were established in eight provinces in July 1937. Once in power, Congress soon began to show signs of enjoying it and forgot the main issue of national independence by becoming in Nehru's words, involved 'in petty reformist activities.'<sup>3</sup> Apart from various social and economic reforms, valuable experience in administration was acquired by many Congress politicians, men who assumed total responsibility in free India. These eight ministries continued in office till October 1939. The outbreak of the Second World War brought the brief partnership between the Congress and the 'imperialist firm'<sup>4</sup> (Nehru's phrase) to a sudden end.

The federal portion of the Act was not brought into operation due to the refusal of the Princes to accede to the new federation. But the Princes alone were not to be blamed. As one writer puts it: '... it is sad to reflect that in the clash of politics, the struggle for power, the wrangle for ascendancy, and the scramble for gains on the part of political organizations, politicians and the Princes, the scheme of federation, became a

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1. IAR, 1936, vol.ii, p.189.

2. See ch.ii.

3. Nehru, op. cit., p.60.

4. Ibid., p.61.



tragic casualty... But the final death-blow was given to it by the outbreak of the second World War which did not give time to its sponsors to stage even a decent burial.'<sup>1</sup>

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1. V.P. Menon, The Transfer of Power in India, p.57.

## CHAPTER III

## MUSLIM POLITICAL IDEAS

At the very beginning of the process of constitutional development in India, Syed Ahmed Khan, the Muslim leader and founder of Aligarh (1875) as an institution of higher education for the Muslim community, was sceptical about the suitability of representative institutions in India as she was 'peopled with different nations'.<sup>1</sup> As late as 1883, he expressed his doubts in a speech delivered in the legislative council. He said (the original speech was in Urdu): '... in borrowing from England the system of representative institutions, it is of the greatest importance to remember those socio-political matters in which India is distinguishable from England...In a country like India, where caste distinctions still flourish, where there is no fusion of the various races, where religious distinctions are still violent, where education in its modern sense has not made an equal or proportionate progress among all the sections of the population, I am convinced... the system of election, pure and simple, cannot be safely adopted. The larger community would totally override the interests of the smaller community....'<sup>2</sup> The whole speech was an eloquent plea against the conception of Indian nationality, and indicated the wide gulf that persisted between the Hindu and Muslim leaders in

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1. Sir Syed Ahmed Khan on the Present State of Indian Politics, p.10.
  2. Abstract of the Proceedings of the Council of the Governor-General of India, 1883, vol.xxii, pp.19-20.

political ideas. The Muslims under the leadership of Syed Ahmed Khan and his successors kept aloof from the Congress, which they dismissed as a predominantly Hindu organisation, and chartered their own separate way in the shape of the Muslim League (1906).<sup>1</sup> The recognition of the principle of separate electorates under the Morley-Minto reforms and the Lucknow Pact of 1916 established their separate identity in Indian politics. From the very beginning the League had refrained from placing before itself any model either on the lines of Western institutions or otherwise for the future constitution of India. While at the annual session of the League held at Lucknow in March 1913, it instead of adopting the Congress model of colonial self-government, adopted in its place the formula, 'the attainment under the aegis of the British Crown of a system of self-government suitable to India'.<sup>2</sup> Muhammad Shafi, the President of the session, remarked: 'The adoption of the alternative proposal put forward by some of our friends that the League should set up colonial form of government in India as its ultimate goal is, in my opinion, inadmissible as well as politically unsound. The political conditions, internal and external, prevailing in the British Colonies have no analogy whatsoever with those obtaining in India...'<sup>3</sup> Then, largely owing to the efforts of M.A. Jinnah, a rising Bombay barrister, there was a period of Congress-League co-operation. For the next few years the League held its sessions along with the Congress simultaneously and at the same place. This spirit of co-existence resulted in

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1. Nevertheless, some prominent Muslims joined the Congress and even held the highest offices in its organisation.
  2. Pioneer, March 24, 1913.
  3. Ibid.

the signing of the famous Lucknow Pact of 1916, whereby the Congress conceded the principle of separate electorates and reserved seats for Muslims. The Muslims were to have one-third of the elected seats in the central legislature, and they were to enjoy a weighted representation in the six provinces where they constituted a minority, in return for a lower ratio of seats to population in their majority provinces, Bengal and the Punjab.<sup>1</sup> The authors of the scheme had devised a form of government by which the people, through their representatives in the legislative councils, would be enabled to control the actions of the nominated and irremovable executive.<sup>2</sup> Though the scheme of 1916 was a substantial advance on the existing position some Muslims might still have felt what Morley had felt about the Act of 1909.

The Montagu-Chelmsford proposals, which were given effect by an Act of 1919, introduced the parliamentary system in the provinces though in a limited form. The Muslim delegates, such as Jinnah, Yakub Hasan, and the Aga Khan, who appeared before the Joint Select Committee on the bill in 1919, accepted it in principle. They even pressed for the system of dyarchy to be simultaneously introduced in the central government.<sup>3</sup> Jinnah said: '... these reforms have got to be worked, and we want to make these reforms a success.'<sup>4</sup> As regards the disappearance of separate communal electorates Jinnah remarked that, 'Nothing will please me more than when that day comes.'<sup>5</sup> Moderate Muslims entered into the dyarchy legislatures and became ministers. But two prominent Muslim leaders, A.K. Fazl-ul-Huq, who served as

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1. For the full text of the Congress-League scheme see D. Chakrabarty and C. Bhattacharyya (~~eds.~~), Congress in Evolution, Appendix iii, pp.189-93.
  2. M/CR, p.131.
  3. Joint Select Committee on the Government of India Bill, 1919, vol.ii, Minutes of Evidence, pp.208-30, 487-96.
  4. Ibid., p.216.
  5. Ibid., p.225.

Minister for Education in Bengal in 1924, and A.K. Ghuznavi, Minister for Public Works, Local Self-Government and Agriculture in the same province in 1924 and 1927, attacked the whole idea of a Western political system. Fazl-ul-Huq wrote: 'My experience of the last few years of the political development in India has convinced me that the declaration of the Imperial Government in Parliament in August 1917 was a great mistake. Representative institutions have been thrust upon India, although there can be no doubt that representative institutions, as they are known in the West, are utterly unsuited to Indian conditions... You can no more expect representative institutions in their proper form to flourish in India than you can expect hot-house flowers to blossom in the icy cold of the North.'<sup>1</sup> He regarded the introduction of representative institutions in India as 'inexpedient and inadvisable' for two reasons: first, 'Oriental ideas of kingship are fundamentally different from those that prevail in the West.' The Oriental peoples had long been accustomed to strong one-man rule whose authority was absolute; and second, the incessant communal strife and the wide cleavage amongst different creeds and classes had created a political atmosphere in which the growth of self-governing institutions had become an impossibility.<sup>2</sup> He suggested that the ancient village self-government system if it could develop peacefully might have been 'congenial to the genius and spirit of the people.'<sup>3</sup> A.K. Ghuznavi wrote: 'Democratic Government has hitherto flourished where there is homogeneity in religious beliefs and in social

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1. Reforms Enquiry Committee, 1924, Views of Local Governments, on the Working of the Reforms, dated 1924, pp.150-1.
  2. Ibid., p.151.
  3. Reforms Enquiry Committee, 1924, Appendix 5, Written Evidence, p.207.

customs and where there is absence of any pronounced racial rivalries. These conditions are wanting in India at present.<sup>1</sup>

The Khilafat Committee and the Jamiat-ul-Ulama-i-Hind (both founded in 1919), two of the most powerful organisations of Indian Muslims at that time, had refused to have anything to do with the Montagu-Chelmsford reforms. The Khilafat movement had a two-fold objective: first, to preserve the Khilafat, and second, to maintain the territorial integrity of the Ottoman Empire. The pan-Islamic movement which had its beginning towards the end of the 19th century in other Muslim countries had its effect on Indian Muslims.<sup>2</sup> The movement was naturally anti-British and emphasised the solidarity of the Islamic world against Western encroachments on Muslim states. The annulment of the partition of Bengal (1911), the British role in the Italo-Turkish War (1911) and the Balkan Wars (1912-13), and subsequently the First World War and the fate of the Turkish Khilafat had weaned the Indian Muslims away from the loyalist policy of Syed Ahmed Khan and his successors. Turkey, which 'represented a visible and enduring reminder of the temporal greatness of Islam's achievements,'<sup>3</sup> was threatened with extinction; the sheet-anchor of their faith in the future was being destroyed. Jawaharlal Nehru wrote: '[The Muslims] searched for their national roots elsewhere. To some extent they found them in the Afghan and Mughal periods of India, but this was not quite enough to fill the vacuum.... This search for cultural roots led Indian Moslems (that is, some of them of the middle classes) to Islamic history, and to the periods when Islam was

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1. Reforms Enquiry Committee, 1924, Appendix 5, Written Evidence, p.210.
  2. For a general history of pan-Islamism and its impact on international politics see L. Stoddard, The New World of Islam.
  3. The Memoirs of Aga Khan, p.153.

a conquering and creative force in Baghdad, Spain, Constantinople, central Asia, and elsewhere... The Mughal Emperors in India recognized no Khalifa or spiritual superiors outside India. It was only after the complete collapse of the Mughal power early in the nineteenth century that the name of the Turkish Sultan began to be mentioned in Indian mosques. This practice was confirmed after the Mutiny.<sup>1</sup> I.H. Qureshi remarked: 'Having lost their own freedom, they (Indian Muslims) had found consolation in the freedom of other Muslims.'<sup>2</sup> Whatever might have been the popular attitude, the Muslim intelligentsia was more concerned about dismemberment of a Muslim state than the theological difficulties that might arise from the disappearance of the Khilafat.<sup>3</sup> Syed Ahmed Khan, who was opposed to any allegiance to the Turkish Khalifa, expressed this feeling in his statement to Sir Theodore Morison. He said: 'When there were many Muslim kingdoms we did not feel much grief when one of them was destroyed; now that so few are left, we feel the loss of even a small one. If Turkey is conquered that will be a great grief, for she is the last of the great powers left to Islam. We are afraid that we shall become like the Jews, a people without a country of our own.'<sup>4</sup> Under the leadership of the Ali brothers, Mohamed Ali and Shaukat Ali, the Muslims took the stand that the freedom of the Jazirat-ul-Arab, which included Arabia, Palestine, Iraq, Syria and Turkey proper, from non-Muslim control, and the maintenance of the requisite degree of the temporal power of the Khilafat to guard

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1. J. Nehru, The Discovery of India, p.346. See also I.H. Qureshi, The Muslim Community of the Indo-Pakistan Subcontinent, pp.271-2.
  2. I.H. Qureshi's "Introduction" in A History of the Freedom Movement, vol.i, pp.49-50.
  3. Qureshi, The Muslim Community of the Indo-Pakistan Subcontinent, p.272.
  4. Sir Theodore Morison, "Muhammadan Movements," in Sir John Cumming (ed.), Political India, 1832-1932, pp.95-6.

Islam's borders and for enforcing Islamic discipline within them had always been two of the principal religious obligations of the Muslims of the world. Therefore, Muslim loyalty to Britain was conditional on Britain's respecting every religious obligation of the Muslim.<sup>1</sup> The weekly Comrade was founded in 1911 to 'prepare the Musalmans to make their proper contribution to territorial patriotism without abating a jot of the fervour of their extra-territorial sympathies, which are the quintessence of Islam.'<sup>2</sup> The two other weeklies appeared at this time. One was Abul Kalam Azad's Al-Hilal and the other was Zafar Ali Khan's Zamindar. For Azad, there was no conflict between Islam and sympathy for Islamic countries and Indian nationalism.<sup>3</sup> During the 1914-18 war they were interned for their pro-Turkish sentiments and their presses were confiscated. On the initiative of the Ali brothers a religious body, Anjuman Khuddam-i-Kabah, was founded in 1913<sup>4</sup>, whose real aim was to unite the Muslims in their determination to save the holy shrines of Islam against non-Muslim aggression and to make all sacrifices to achieve that purpose. Dr. M.A. Ansari led a medical mission to Turkey for the treatment of injured soldiers. Shaukat Ali urged the Muslims to organise volunteers to fight for Turkey. The British Premier, Lloyd George's pledge in January 1918 not to deprive Turkey of its possessions was broken.<sup>5</sup> As a result of the terms of the Treaty of Sèvres, imposed on Turkey in 1920, she was deprived of part of her homelands. The Treaty of Sèvres inflamed the Muslim sentiment in India to an unprecedented degree. The India Khilafat delegation, led

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1. Afzal Iqbal (ed.), Select Writings and Speeches of Maulana Mohamed Ali, p.388.

2. Mohamed Ali, My life: A Fragment, p.46.

3. Nehru, op.cit., p.351.

4. Dr. S. Moinul Haq, "The Khilafat Movement", in A History of the Freedom Movement, vol.iii, pt.i, p.209; Mohamed Ali, op.cit., pp.67-8.

5. On January 5, 1918, Lloyd George stated: 'Nor are we fighting... to deprive Turkey of its capital, or of the rich and renowned lands of Asia Minor and Thrace, which are predominantly Turkish in race.' The Times, January 7, 1918.



by Mohamed Ali, could not influence the Allies in Paris, though the Government of India protested strongly against the harsh provisions imposed upon Turkey by the Treaty of Sèvres, and Mohamed Ali returned to India empty-handed. The Hindus under the leadership of Gandhi seized this opportunity to forge an alliance with the pan-Islamic leaders of the Khilafat Committee and organised a non-co-operation movement against the British. Gandhi espoused the cause of the Khilafat and the Muslims joined the movement for the liberation of the country. Thus began the brief honeymoon between the two communities. The slogan of 'Islam in danger' was raised. Around 1912 Shibli Nomani, a distinguished educationist, had observed: 'For the last thirty years, efforts have been made to uplift the Muslims in the name of nationhood, but the failure of these efforts is only too obvious. The followers of the Prophet do not respond to the call of nationhood. Appeal to them in the name of religion and you will see what a splendid response you get.'<sup>1</sup> The response was forthcoming when the Khilafat leaders, like Mohamed Ali, Shaukat Ali, Zafar Ali Khan and Azad, urged the Muslim masses to leave India which had become a Dar-ul-Harab (an infidel land) because the Government of India had trampled the law of Islam under foot.<sup>2</sup> Many Muslims joined the hijrat (migration) movement and moved in the direction of Afghanistan. The numbers officially calculated at 18,000 for August 1920.<sup>3</sup> The total numbers estimated between 500,000 and 2,000,000.<sup>4</sup> This proved to be a futile enterprise when the Afghan government refused entry to these migrants.

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1. A.H. Albiruni, Makers of Pakistan and Modern Muslim India, pp.126-7.
  2. See A. Husain, Fazl-i-Husain: A Political Biography, p.105.
  3. India in 1920, p.52.
  4. F.S. Briggs, "The Indian Hijrat of 1920", Moslem World, April 1930, p.165.

The Moplah uprising was a movement of an entirely different character. It is true that the Moplahs, poor Muslim peasants of mixed Indo-Arab origin along the Malabar coast of South India, had often rebelled in the past and that they had other grievances besides the Khilafat issue. But the evidence now clearly shows that the Khilafat and non-co-operation movements, were responsible for inflaming the minds of the Moplahs with a vain hope of Swaraj and eternal bliss. 'Their intention was, absurd though it may seem, to subvert the British Government and to substitute a Khalifate Government by force of arms.'<sup>1</sup> The Khilafat leaders called upon Muslim personnel to desert from the army because it was 'religiously forbidden' to fight against fellow Muslims in other countries and even suggested the possibility of the establishment of an Indian republic.<sup>2</sup> The Indian Muslims were resigning from government posts, quitting colleges and courts and filling jails for the institution of Khilafat, while the Turks themselves were engaged in dismantling it. And, paradoxically enough, all these sacrifices were made to impose a crumbling institution of a by-gone age on the unwilling Turks who were working towards the establishment of republican institutions. The Turks, under their new leader Mustapha Kemal Pasha, abolished the Sultanate in 1922; the title of Khalifa was conferred upon Abdul Majid, a member of the old imperial family, but stripped of temporal power. Although this was a severe blow to the Muslims of India, who always contended that the Khalifa must be a powerful monarch and the protector of the sanctuaries of Islam, they met the rebuff in good spirit. The All-India Khilafat

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1. J.J. Banninga, "The Moplah Rebellion of 1921," Moslem World October 1923, p.380.
  2. Syed Rais Ahmad Jafri (ed.), Selections from Mohammad Ali's Comrade, p.119; I.A.R., 1922, vol.1, p.173.

Conference and the Jamiat-ul-Ulama-i-Hind held their sessions at Gaya (Bihar) in December 1922 along with the Congress, and they declared their approval of the new Khalifa by asserting that his election was 'more in accordance with the Shariat.'<sup>1</sup> No mention was made of the new Khalifa's having been given spiritual but not temporal power at the Khilafat conference. At the Jamiat session, the question was discussed but opinion was sharply divided. There was a pious request that Turkey would 'keep intact the real prestige and power of the Khalifa as enjoined by the Shariat.'<sup>2</sup> Muslim apprehensions for the future of Islam were 'set at rest by the Treaty of Lausanne [1923], which gave Turkey better terms of peace than had one time been anticipated, and the abolition of the Khilafat [1924] by Mustapha Kemal Pasha gave the movement its quietus.'<sup>3</sup> The Khilafat movement, it is true, was completely romantic and out of touch with the actualities but this pan-Islamic spirit had also a great deal to do with the formulation of the Pakistan ideology and with the birth of Pakistan itself.<sup>4</sup> With the collapse of non-co-operation, and the Khilafat movement, Hindu-Muslim relations deteriorated rapidly. There was disagreement on policy both in the Congress and among Muslim leaders.

There was a split within the ranks of the Muslim leadership immediately after the appointment of the Simon Commission in 1927. One group, led by Muhammad Shafi, one of the most influential leaders of the Punjab, was in favour of co-operating with the commission. They were critical over the all-British commission but they distrusted the Hindus and were

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1. IAR, 1923, vol. i, p.923.

2. Ibid., p.941.

3. ISC, vol.i, p.252.

4. Sharif al-Mujahid, "Pan-Islamism", in A History of the Freedom Movement, vol.iii, pt.i, p.117.

convinced that the Muslims as a minority community had more to gain by co-operating with the British. Shafi's main support came from the Punjab, Sind, the North-West Frontier Province and Bengal. Another group was composed of two factions, the Khilafat group, which followed the Ali brothers, and the Jinnah group. The Khilafat group had declined in strength after the abolition of the Khilafat in 1924, but Jinnah had a large following, especially in Bombay, Madras, and other provinces in which the Muslims were in a minority. At a meeting held at Delhi in March 1927 of about thirty prominent Muslim leaders under the presidency of Jinnah, it was agreed to accept joint electorates with reservation of seats under certain conditions. This offer, which came to be known as the 'Delhi Proposals,' demanded that Sind should be a separate province, reforms should be introduced in the North-West Frontier Province and Baluchistan, in the Punjab and Bengal representation should be in accordance with population, and in the central legislature Muslim representation should not be less than one-third.<sup>1</sup>

These divisions were reflected in a split in the Muslim League at the annual session in December 1927. The group, led by Jinnah, met at Calcutta under the presidency of Mahomed Yakub, Deputy President of the Legislative Assembly. Besides Jinnah, Ali Imam, Azad, Mohamed Ali, Shaukat Ali and Zafar Ali Khan, were the distinguished participants. They approved the 'Delhi Proposals' and a resolution to boycott the Simon Commission was adopted.<sup>2</sup> The other groups met at Lahore under the presidentship of Muhammad Shafi and decided

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1. IQR, 1927, vol. i, pp.33-4.

2. IQR, 1927, vol. ii, pp.443-8.

to co-operate with the commission. This session was attended by the prominent Punjab Khilafatists including Dr. Muhammad Alam, Chaudhri Afzal Haq. Hasrat Mohani, Iqbal, and Zafrullah Khan were also present. The Shafi group dissociated themselves from the so-called 'Delhi Proposals'. The usual resolutions in favour of the separation of Sind from Bombay, and the introduction of constitutional reforms in the Frontier Province were adopted.<sup>1</sup>

The efforts of the Nehru Committee in 1928 to close the communal breach seemed, in fact, to have widened it. Its recommendations on the question of the position of Muslims in a self-governing India were that the constitution should include a declaration of rights; the North-West Frontier Province and Baluchistan should acquire the same status as others provinces, and Sind should be separated from Bombay; the Muslims should have reservation of seats only at the centre and in the provinces where they were in a minority in strict proportion to their population, with the right to contest additional seats; no weightage should be allowed; the principle of separate electorates should be given up and that the system of communal representation should be re-examined after ten years.<sup>2</sup> It did not lay sufficient emphasis upon federation.

A small group of Congress Muslim leaders like Ansari and Azad accepted the communal provisions of the new scheme. Among the critics of the report were not only leaders like Muhammad Shafi and Zulfikar Ali Khan in the Punjab and A.K. Ghuznavi in Bengal, but also like Mohamed Ali and Shaukat

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1. IQR, 1927, vol. ii, pp.452-8. The Punjab Khilafatists were not happy over the resolution adopted in favour of co-operating with the commission and they did not join the session on the second day.
  2. All-Parties Conference: Report of Committee (1928), pp.89-90, 101-3, 123-4, 162, 166; Supplementary Report of the Committee, pp.50-1.

Ali, the ~~Caliphate~~ leaders and Mahomed Yakub who was one of Jinnah's followers.<sup>1</sup> Jinnah himself refused to join the chorus of disapproval and made an effort to bring about a really satisfactory compromise. With a few of his followers he attended the All-Parties Conference held at Calcutta in December 1928 and moved a series of amendments. While moving his amendments on behalf of the Muslim League, Jinnah said that no country had succeeded in either wresting a democratic constitution from the domination of another nation or establishing representative institutions internally without guaranteeing the security of minorities whenever such problems arose.<sup>2</sup> The main terms of Jinnah's amendments were: firstly, that Muslims should be given one-third representation in the central legislature; secondly, that the Punjab and Bengal should have Muslim representation on a population basis for ten years, subject to the revision of this principle after that period, and, thirdly, that residuary powers should be vested in the provincial legislatures and not at the centre.<sup>3</sup> But Jinnah's amendments were rejected by the Congress. After this snub Jinnah and his followers withdrew and the conference became practically a Hindu body. The rejection of Jinnah's demands has been described as a turning point in his career, away from nationalism towards Muslim separatism. 'This,' he was reported to have told a friend, 'is the parting of the ways.'<sup>4</sup> Many of the Muslim members of the central and provincial legislatures issued a manifesto condemning the 'communal' parts of the Nehru Report and included among the signatories even members of the Congress

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1. See IQR, 1928, vol.ii, pp.404-26.

2. M.H. Saiyid, Mohammad Ali Jinnah: A Political Study, p.419.

3. Ibid., p.418.

4. H. Bolitho, Jinnah: Creator of Pakistan, p.95.

Party itself.<sup>1</sup> Rajendra Prasad admitted that, 'This marked the defection of an influential section of the Muslims from the Congress and had a very adverse effect on Indian affairs in later years.'<sup>2</sup>

As the rift between the Hindus and Muslims widened, Shafi and a few other leaders started a movement to reunite the Muslims on a common platform. The Aga Khan was asked to act as a mediator and he presided over an All-Parties Muslim Conference which was held at Delhi on December 31, 1928 - January 1, 1929. It was a representative gathering of the most prominent and influential Muslim leaders in India. The distinguished absentees were Jinnah and his followers and the Congress Muslims. The manifesto adopted at this meeting provided the Muslims with their 'code-book',<sup>3</sup> which demanded a federal form of government with complete provincial autonomy, and residuary powers vested in the constituent states; separate electorates and weightage; the enjoyment of a majority position in the provinces where they constituted a majority of the population; one-third Muslim representation in the central legislature; due representation in the central and provincial cabinets, in the civil services and on all statutory self-governing bodies; safeguards for protection and promotion of Muslim education, religion and personal law; the separation of Sind from Bombay, and the extension of the reforms to the North-West Frontier Province and Baluchistan.<sup>4</sup>

Jinnah subsequently took part in a series of informal discussions at Delhi and agreed to accept the conference resolution. In March 1929, Jinnah drafted his famous 'fourteen

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1. J. Coatman, Years of Destiny, p.215.

2. R. Prasad, Autobiography, p.288.

3. The Memoirs of Aga Khan, p.210.

4. For the text of the resolution see IQR, 1928, vol.ii, pp.415-6.

points', accommodating the various points of view.<sup>1</sup> He even tried to reunite the two rival sections of the League but his attempt failed. The Shafi group insisted on the Delhi conference resolution, and Jinnah and his adherents on the 'fourteen points'. There was an active minority, led by Azad, who believed that the Nehru Report should be approved, subject to some modifications. When the Jinnah section of the League met on March 1929, in his absence, a motion to approve the report was then submitted and, amid loud protests, was declared to be adopted. Jinnah arrived while the pandemonium was at its height and adjourned the meeting sine die.<sup>2</sup> Consequently a small section mainly the Congress Muslims broke away from the Jinnah League and organised the All-India Nationalist Muslim Party in July 1929. The Muslims were hopelessly divided in the year 1929 and for quite sometime thereafter. The Delhi conference represented the right-wing, the group that pressed for the adoption of all Muslim demands and refused to make any concessions to the Hindus. The Khilafat Committee was almost eclipsed.

The Muslim representatives at the three sessions of the Round Table Conference called by the British Government in 1930-2, to consider further reforms, demanded the same sort of safeguards as formulated in the All-Parties Muslim Conference at Delhi in 1929. In this there was fundamental agreement between Muslims as diverse as the Aga Khan, Jinnah, Mohamed Ali or Shafi. While there was a general agreement of all parties on the issue of federation, but there were differences with regard to the details. The context between the advocates of a strong central

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1. IQR, 1929, vol. i, pp.364-5.

2. Ibid., pp.365-70.



government and the adherents of state's rights and provincial autonomy, so familiar in the history of the formations of other federations, had been fought over strenuously in the debate of the Federal Structure Committee. As for the Muslim League and other Muslim groups, they had always been opposed to a strong centre. They envisaged that participation of the Princely States in a federation would ensure a centre which would be limited to the minimum number of subjects, the residuary powers being retained by the federating units. The Muslims had attached great importance to the need of a genuine federation. Their objective was the transformation of the Indian provinces, now existing or to be created, into political units as autonomous as the American or the Australian states or the cantons of Switzerland.<sup>1</sup> Apart from the question of federal structure, the communal distribution of seats in the federal and provincial legislatures was the most difficult problem that came before the conference. The Muslims insisted on separate electorates with weighted representation in the central legislature and in the minority provinces, and non-interference with the Muslim majority in Bengal and the Punjab.<sup>2</sup> But on these issues no new solution was put forward. Gandhi might have been expected to make a useful contribution to the solution of the communal problem but the effect of his intervention seemed to have exacerbated rather than helped to smooth over the difficulties. One authority states that at one stage 'Gandhi agreed to concede practically all of them [Muslim demands], on condition that the Moslems would abandon the other

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1. See Dr. Shafa'at Ahmad Khan, "Muslims in the New India," Asiatic Review, January 1932, p.10.
  2. Indian Round Table Conference (Second Session), 7th Sept. 1931-1st Dec. 1931, Proceedings, pp.153-65, 175-81, 314-5, 329-31, 334-8, 356; Proceedings of Federal Structure Committee and Minorities Committee; Indian Round Table Conference (Third Session), 17th Nov. 1932-24th Dec. 1932, pp.193-4.

minority groups and vote against giving them separate representation.<sup>1</sup> His offer was rejected. The Muslims and other minority communities - the Sikhs, the Depressed Classes, the Indian Christians, the Europeans and the Anglo-Indians - held a separate meeting and drafted a long list of demands which came to be known as the 'Minorities Pact.'<sup>2</sup> The failure to reach agreement on the communal representation among the communities themselves led the British Government to announce the 'Communal Award' on April 1932. Separate electorates were retained for the Muslims. The weightage was conceded to the Muslims in the provinces in which they were in a minority as well as to the Sikhs and Hindus in the Punjab. The award had conceded the essential demands of Muslim spokesmen but did not concede their maximum demands.<sup>3</sup>

For several years the Muslim minority hoped to preserve their identity with the aid of federal arrangements. The Muslims appeared satisfied with those embodied in the Government of India Act, 1935. The system of separate electorates and weightage granted a generation earlier, continued. Sind was separated from Bombay so that there would be four Muslim-majority provinces out of a total of eleven. At the centre Muslims were allotted one-third of the seats.

The Muslim League did not fare very well at the elections

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1. W.R. Smith, Nationalism and Reform in India, p.406.
  2. The pact, inter alia, included separate electorates, representation in the ministries, religious, educational and cultural liberty, civic and service rights. See Indian Round Table Conference (Second Session), 7th Sept. 1931-1st Dec. 1931. Proceedings, Appendix iii, pp.68-70.
  3. The Muslims contended that they had not been fairly treated. The principle that no majority should be reduced to the position of a minority or even to that of equality, was departed from in the case of Bengal. Weightage enjoyed by the Muslims in the provinces where they were a minority had been reduced in all cases. Joint Select Committee on Indian Constitutional Reform, (Session 1932-33), vol. iiC, Minutes of Evidence, p.1477.

held under the 1935 Act. Out of a total of 487 Muslim seats it captured only 108. Out of the total of 1585 seats in the provincial assemblies Congress won 705. In five provinces, Madras, the United Provinces, the Central Provinces, Bihar and Orissa - it obtained clear majorities, and in three other provinces - Bombay, Assam and the North-West Frontier Province - it emerged as the largest party. But the Congress won only 26 of the Muslim seats mostly in the North-West Frontier Province. The greater number of Muslim seats had been won by Muslims who did not belong to the Congress Party. In the Punjab the Unionist Party led by Sikander Hyat Khan had obtained a clear majority - 95 seats out of 175.<sup>1</sup> As a result, Congress ministries took office in seven provinces in July 1937. The Unionist Party assumed office in the Punjab, and coalition ministries were formed in Assam, Bengal and Sind. But after two years and four months of Congress rule (1937-39) the situation had undergone a dramatic change. Several Congress governments were accused by the Muslims of adopting a policy prejudicial to the community. Reports were issued regarding the ill-treatment alleged to be meted out to Muslims.<sup>2</sup> There was supposed to be discrimination against Muslims in appointments to the public services; Hindi was encouraged at the expense of Urdu, in the schools and on all public occasions, cow slaughter was prohibited; 'Bande Mataram' was introduced as a

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1. See Return Showing the Results of Elections in India, 1937.

2. Muslim grievances against Congress governments were listed in three reports:

(a) Report of the Inquiry Committee appointed by the Council of the All-India Muslim League to enquire into Muslim Grievances in Congress Provinces (Pirpur Report).

(b) Report of the Enquiry Committee appointed by the Working Committee of the Bihar Provincial Muslim League to enquire into some Grievances of Muslims in Bihar (Shareef Report).

(c) Muslim Sufferings under Congress Rule, published by Fazl-ul-Huq.

national anthem, and perhaps the most important reason for Muslims' alarm was the refusal by the Congress to form a coalition with the Muslim League, especially in the United Provinces. The Congress was successful, without having to rely upon League support and demanded a price for co-operation which would have virtually lead to 'the extinction of the League as a separate organisation of Muslims: this, therefore, was unacceptable to the League.<sup>1</sup> These issues were enough to wound the sentiments of Muslims. Death had suddenly claimed many Muslim leaders of all-India stature, leaving behind Jinnah almost without a rival on the Indian political scene.<sup>2</sup> Jinnah, the complete politician, indifferent to Islamic theology, quickly seized the opportunity and exploited the situation very skilfully by rousing the Muslim masses with the cry of 'Islam in danger'. He set about reorganising the Muslim League and started a 'mass-contact' campaign. The Congress attempt to influence the Muslim masses after the elections of 1937 did not meet with any success. The annual membership subscription of the Muslim League was reduced to two annas (about 2d.) in order to attract more Muslim masses. Within a short period over 170 new branches of the League had been established, 90 of them in the United Provinces and 40 in the Punjab. Approximately 100,000 new members were said to have

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1. The main Congress terms were that the League group in the United Provinces assembly should cease to function as a separate group, the League members should join Congress and its members should be subjected to the control and discipline of the Congress, the League's Parliamentary Board should be dissolved and the League should refrain from contesting by-elections. See Pioneer, July 30, 1937. According to Azad, Nehru's fondness for abstract theory was responsible for the breakdown of negotiations between the Congress and the League as he refused to take more than one Leaguer into the Ministry. Maulana Abul Kalam Azad, India Wins Freedom, pp.160-1. Choudhry Khaliquzzaman refers to the Congress offer as the 'death warrant' of the League. Choudhry Khaliquzzaman, Pathway to Pakistan, p.161.

2. Ajmal Khan d.1927; Mohamed Ali d.1931; ~~The~~ Small Raja of Mahmudabad d.1931; Shafi d.1932; Ali Imam d.1932; Fazl-i-Husain d.1936; Shaukat Ali d.1937; Ansari d.1936; Iqbal d.1938.

been enlisted in the United Provinces alone.<sup>1</sup> Between January 1938 and September 1942 the League won forty-six out of fifty-six by-elections in Muslim constituences for the central and provincial legislatures.<sup>2</sup> Even the Premiers of the Punjab (Sikander Hyat Khan) and Bengal (Fazl-ul-Huq) accepted the overall authority of Jinnah and the League though they retained their party identity. The League was enormously strengthened, so Jinnah now claimed that the League alone represented the entire Muslim community of India and must be recognised as the only qualified body to speak on their behalf, ~~and that the Congress should speak on their behalf~~, and that the Congress should speak only on behalf of the Hindus.

Jinnah's attitude towards the parliamentary form of government had undergone a complete change after 1938 in view of its apparent unsuitability for a divided society. In 1906, Jinnah did not join the famous Muslim deputation and refused to be a member of the Muslim League till 1913. He joined the League in the autumn of 1913 on the solemn assurance 'that loyalty to the Muslim League and the Muslim interest would in no way and at no time imply even the shadow of disloyalty to the larger national cause to which his life was dedicated.'<sup>3</sup> He also remained as a member of the Congress till 1920 when he resigned on the issue of non-co-operation. He along with all other moderates, who believed in constitutional methods, remained outside the movement. Neither Gandhi's emphasis on austerity as symbolised by khaddar (home-spun cloth) nor his advocacy of non-violent non-co-operation as a political weapon appealed to them.<sup>4</sup> As Jawaharlal Nehru rightly observed:

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1. R. Coupland, Indian Politics, 1936-1942, p.183.

2. Ibid., Appendix vi, p.333.

3. Sarojini Naidu, "A Pen Portrait", in Mohomed Ali Jinnah, an Ambassador of Unity: His Speeches and Writings, 1912-1917, p.11.

4. K.A. Abbas, "Jinnah - the Enigma of India", Asia, August 1940, p.433.

'... temperamentally he [Jinnah] did not fit in at all with the new Congress. He felt completely out of his element in the Khadi-clad crowd demanding speeches in Hindustani. The enthusiasm of the people outside struck him as mob-hysteria.'<sup>1</sup> In 1925, speaking in the central legislature, Jinnah said: '... I am a nationalist first, a nationalist second and a nationalist last... I once more appeal to this House, whether you are a Mussalman or a Hindu, for God's sake do not import the discussion of communal matters into this House and degrade this Assembly which we desire should become a real national Parliament.'<sup>2</sup> A democratic system of parliamentary government, how, he held, based on the concept of a homogeneous nation and the method of counting heads, was totally unsuited for heterogeneous countries like India.<sup>3</sup> When the Congress ministries resigned, the League observed a day of deliverance and thanksgiving throughout the country. In September 1939, the Working Committee of the Muslim League declared its opposition to any 'Federal objective' because the subcontinent was inhabited by 'various nationalities.'<sup>4</sup> This was the course mainly followed after the First World War in the rise of the succession states of the Austro-Hungarian Empire and more recently of Israel where federalism as a solution was rejected.<sup>5</sup> Dicey's two conditions for the formation of a federation seemed to have not fulfilled in the case of India. He lays down two conditions: the first condition is a sense of nationality among the units federating and the second is that there must exist a 'very peculiar state of sentiment among the inhabitants of the countries which it is proposed to unite. They

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1. J. Nehru, An Autobiography, pp.67-8.
  2. Legislative Assembly Debates, 1925, vol. v, pt.iii, p.2478.
  3. Jamil-ud-Din Ahmad (ed.), Some Recent Speeches and Writings of Mr. Jinnah, vol.i, pp.128-9.
  4. IAR, 1939, vol.ii, p.351.
  5. A.W. Macmahon (ed.), Federalism: Mature and Emergent, p.9.

must desire union and must not desire unity.'<sup>1</sup>

In March 1940, at a Lahore session, the Muslim League adopted a resolution declaring that 'the areas in which the Muslims are numerically in a majority, as in the north-western and eastern zones of India, should be grouped to constitute "independent states" in which the constituent units shall be autonomous and sovereign.'<sup>2</sup> There was <sup>an</sup> ambiguity about the precise meaning of this resolution, and few observers believed that the Muslim League actually wanted the partition of India. In reply to Raja Maheshwar Dayal, the Secretary of the Hindu Mahasabha, Choudhry Khaliquzzaman stated in October 1942: 'The Muslim League resolution aims at having two States within Indian geography but you want to create a Pakistan State outside India. We want partition of administration within India; you on the other hand propose partition of the geography of India. I would never agree to it.'<sup>3</sup> Indeed, nowhere in the resolution is 'Pakistan' even mentioned. The subsequent story revealed the widening of the gulf between the Hindus and Muslims. There were, of course, some plans by various authors who did not advocate complete separation with India but wanted a loose federation or simply a confederation. In April 1946, Azad proposed that the Muslim fear of Hindu domination would be mitigated if the Congress met this fear by granting full autonomy to the provincial units and vesting residuary powers in the provinces. The formula provided for two lists of central subjects, compulsory and optional. Any provincial unit, if it so desired, could administer all the optional subjects except a minimum delegated to the centre.<sup>4</sup>

1. A.V. Dicey, Introduction to the Study of the Law of the Constitution

2. IAR, 1940, vol.i, p.312.

p.137.

3. Khaliquzzaman, op.cit., p.286.

4. Azad, op.cit. p.144. Other schemes were drawn up by the following authors: Sikander Hyat Khan, Outlines of a Scheme of Indian Federation; Syed Abdul Latif, (i) The Muslim Problem in India; (ii) The Cultural Future of India; (iii) A Federation of Cultural Zones for India; 'A Punjabi' (Muhammad Shah Nawaz Khan), Confederacy of India.

This was also the attraction of the Cabinet Mission plan of 1946. But these schemes gained favour neither with the Congress nor with the League. So in 1947, when independence came, it was partition and not federation which occurred, and two new states, India and Pakistan, were created.

But what occurred between 1937 and 1940 was not the evolution of a new political concept. For many years, Muslim thinkers had been evolving schemes for a separate Muslim polity. At the end of the nineteenth century, the famous pan-Islamist, Jamal-ud-Din Afghani, was reported to have dreamt of a Muslim republic embracing Central Asia, Afghanistan and West India.<sup>1</sup> In 1921, the pan-Islamist and Khilafat leader, Hasrat Mohani, advocated 'an Indian Republic on the lines of the United States of America' on a federal basis. Mohani pointed out that in spite of the existing Hindu-Muslim unity there still persisted serious misunderstanding and suspicion between the two communities. The Hindus had a lurking suspicion that with the Muslim invasion of India the Indian Muslims would help their co-religionists.<sup>2</sup> On the other hand, the Muslims feared that on the achievement of self-government the Hindus would acquire greater political power and would use their numerical superiority to crush the Muslims. So long as the country was not freed from British rule the Muslims would be under double subjection: British and Hindu. After independence was achieved the Muslims would have only the Hindu majority to fear. But this latter possibility could be negatived if an Indian Republic was organised on a federal basis similar to that of the United States of America, 'for, while the Mussalmans as a whole are in a minority in India, yet nature has

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1. A History of the Freedom Movement, vol.i, pp.48-9.

2. cf. Mohamed Ali, Select Writings and Speeches of Maulana Mohamed Ali, p.358. 'The Muslims are suspected in some Hindu quarters of desiring to invite their co-religionists abroad to subvert the Swaraj Government and re-establish Muslim rule.'



provided a compensation; the Mussalmans are not in a minority in all the provinces. In some provinces.. are more numerous than the Hindus. In the "United States of India" the Hindu majority... will not be allowed to overstep the limits of moderation against the Mussalmans'.<sup>1</sup> This interesting solution of the Hindu-Muslim problem was characterised by a Panjabi Hindu leader, Lajpat Rai, as 'a clear partition of India into a Muslim India and a non-Muslim India.'<sup>2</sup> This suggestion was presumably put up before the All-Parties Conference in 1928. As the Nehru Report noted: 'The Muslims being in a minority in India as a whole fear that the majority may harass them, and to meet this difficulty they have made a novel suggestion ~~in~~ that they should at least dominate in some parts of India.'<sup>3</sup> The Aga Khan went further. At the Calcutta meeting of the All-Parties Conference in the same year he advocated independence for each Indian province which would be 'akin to that of Bavaria in the former German confederation, rather than that of American State or Swiss Canton.'<sup>4</sup> At the first Round Table Conference Mohamed Ali emphasised the fact that if there were provinces in which the Hindus were in a majority there were also provinces in which the Muslims were in a majority. 'That gives us our safeguard, for we demand hostages as we have willingly given hostages to Hindus in the other Provinces where they form huge majorities.'<sup>5</sup> Shafi said: 'To my mind the Federal India of the future with the Central Government in the hands of the majority community, and the Provincial

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1. IAR, 1922, vol.i, pp.403-4.

2. Saiyid., op.cit., p.30. Lajpat Rai had suggested the partition of India as early as 1924. Savarkar, the President of the Hindu Mahasabha, had frequently referred to the Hindus and Muslims as two nations, see R. Symonds, The Making of Pakistan, p.59. Qureshi, op.cit., p.284 f.n.; B.R. Ambedkar, Pakistan or the Partition of India, p.268.

3. All-Parties Conference: Report of Committee (1928), pp.28-9.

4. All Parties Conference, Supplementary Report of the Committee (1928), p.10; P. Sitaramayya, The History of the Indian National Congress, vol. i, p.334.

5. Indian Round Table Conference (First Session), 12th Nov.1930-19th Jan. 1931, ~~p.104~~ Proceedings, p.104.

Governments in six out of the eight Governors' Provinces in the hands of the same community, the four Provinces in which the majority community will be in a minority and the minority community will be in a majority will in itself constitute a guarantee of good treatment by both the communities.'<sup>1</sup> Mohamed Ali also claimed that a community with 'more than 70 millions cannot easily be called a minority.'<sup>2</sup> Back in 1930, Iqbal, the poet-philosopher, had apparently advocated a Muslim state in North-West India. In his presidential address at the annual session of the Muslim League in 1930, Iqbal said: 'I would like to see the Punjab, North-West Frontier Province, Sind, Baluchistan amalgamated into a single state. Self-government within the British Empire, or without the British Empire, the formation of a consolidated North-West Indian Muslim state appears to me to be the final destiny of the Muslims at least of North-West India.'<sup>3</sup> The principle of European democracy could not be applied to India without recognising the existence of communal groups. 'The Muslim demand for the creation of a Muslim India is, therefore, perfectly justified.'<sup>4</sup> Iqbal, however, was not very clear whether he was contemplating a separate sovereign Muslim state or he was just thinking of the consolidation of the Muslim North-West into one political unit as part of an all-India federation. But the remainder of his speech seemed to confirm the latter view. 'To my mind a unitary form of government is simply unthinkable in a self-governing India.'<sup>5</sup> So he

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1. Indian Round Table Conference, 12th Nov.1930-19th Jan.1931, Proceedings of Sub-Committees, vol.iii, Sub-Committee No.iii (Minorities), pp.51-2.
  3. Ibid., p.161. In 1924, Mohamed Ali in a speech at Aligarh said: 'If the Hindu-Muslim problem is not settled, India will be divided into Hindu India and Muslim India'. Khaliquzzaman, op.cit., p.238.
  3. IAR, 1930, vol.ii, p.338.
  4. Ibid., p.337.
  5. Ibid., p.339.

suggested that 'in view of India's infinite variety in climates, races, languages, creeds and social systems the creation of autonomous states based on the unity of language, race, history, religion and identity of economic interests, is the only possible way to secure a stable constitutional structure in India.'<sup>1</sup> Residuary powers must be left entirely to self-governing states, the central government would exercise only those powers which were to be given by the free consent of states.<sup>2</sup> Choudhry Khaliquzzaman, who was a close observer of events in the Muslim League, states: 'The clarion call of Allama Iqbal in the 1930 session of the Muslim League at Allahabad had failed to attract the attention even of the intellectual classes, much less of the masses, because the Muslim League had not considered it worthwhile even to take notice of it in its proceedings by drafting any appropriate resolution.'<sup>3</sup> In his letters written during the period from May 1936 to November 1937 Iqbal argued for 'a separate federation of Muslim provinces.'<sup>4</sup> He wrote: '... the enforcement and development of the Shariat of Islam is impossible in this country without a free Muslim state or states.'<sup>5</sup> While in his book The Reconstruction of Religious Thought in Islam he dreamt of Islamic Republics comprehending all the faithful. 'For the present every Moslem nation must sink into her own deeper self, temporarily focus her vision on herself alone, until all are strong and powerful to form a living family of republics.'<sup>6</sup> Almost a decade was to pass before Jinnah admitted that he had finally been converted to Iqbal's conclusions as a result of

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1. IAN, 1930, vol.ii, p.338-9.

2. Ibid., p.339.

3. Khaliquzzaman, op.cit., p.196.

4. Letters of Iqbal to Jinnah, p.24.

5. Ibid., p.18.

6. Sir Mohammad Iqbal, The Reconstruction of Religious Thought in Islam, p.223.

careful examination and study of the constitutional problems facing India.<sup>1</sup> In 1933, Rahmat Ali, an Indian Muslim student studying at Cambridge, England, invented the name of 'Pakistan'. Rahmat Ali's idea was to have a 'separate, sovereign' Pakistan composed of five Muslim provinces in the North-West India.<sup>2</sup> The proposal was circulated to the members of the Round Table Conference but was never officially put forth. The Muslim delegates, who appeared before the Joint Select Committee in 1933, dismissed the idea as 'a student's scheme', 'chimerical and impracticable.'<sup>3</sup>

We can broadly divide Muslim leadership into four schools of thought. The leaders like Jinnah and Iqbal appeared on the political horizon as nationalist Muslims: they were Indians first and Muslims afterwards. However, they ended their political careers as Muslim nationalists and staunch supporters of Muslim nationalism.<sup>4</sup> The pan-Islamists, like Mohamed Ali, Shaukat Ali, Hasrat Mohani, Azad Sobhani, and Shafi Daoodi, were not prepared to lose the identity of the Muslim community in the nascent Indian nation. They belonged (in Mohamed Ali's words) 'to two circles of equal size, but which are not concentric. One is India, and the other is the Muslim world.' They were not 'nationalists but supernationalists.'<sup>5</sup> The Congress Muslims,

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1. Letters of Iqbal to Jinnah, p.6.

2. See C. Rahmat Ali, Pakistan.

3. Joint Select Committee on Indian Constitutional Reform (Session 1932-33), vol.iii, Minutes of Evidence, p.1496.

4. See, for example, Iqbal's collection of poems Bang-i-Dara which displayed his Indian patriotism. The Aga Khan and Shafi had all along advocated the individuality of the Muslim community and co-operated with the British for the safeguarding of Muslim interests.

5. Indian Round Table Conference (First Session), 12th Nov.1930-19th Jan. 1931. Proceedings, p.103. Mohamed Ali wrote, (Comrade: March 29,1913, p.246) 'We have never ceased to regret the strained relations of the different communities of India, but we have not been insincere enough on that account to endeavour to conceal our misgivings about an unconditional surrender of the individuality of the Moslem community. It is political co-operation that we have always advocated and not political Nirvana of the Moslem community. cf. Azad Sobhani (IGH, 1928, vol.ii, p.404) 'The doctrine of nationalism as

led by Azad (a pan-Islamist in his earlier days), Ansari and Ajmal Khan, had been in favour of political collaboration with the Hindus and became staunch supporters of Indian nationalism. Azad remained quite popular with certain segments of Muslim society, such as that represented by the Deoband school and the Jamiat-ul-Ulama-i-Hind, but became decidedly unpopular with the greater section of the Muslim community. While Muslims under the leadership of Jinnah demanded 'independent states' in the North-Western and Eastern Zones of India in 1940 on the basis of two-nation theory, Azad in his presidential address to the Ramgarh session of the Congress in the same year, reiterated his pride in being an Indian. 'I am a part of the indivisible unity that is Indian nationality', declared Azad, 'I am indispensable to this noble edifice and without me this splendid structure of India is incomplete. I am an essential element which has gone to build India. I can never surrender this claim.'<sup>1</sup> Finally, some sections of the ulama, represented by Jamiat-ul-Ulama-i-Hind and Jamaat-i-Islami, were opposed to Muslim separatism based on nationalistic idea. Besides, there were pro-nationalist (Indian nationalism) and pro-Congress groups such<sup>as</sup> the Momins, the Ahrars, the Red shirts and the All-India Shia Conference. Most of these groups were founded in the early 'forties. The Muslims who owed allegiance to factions outside the League certainly ran into several millions but were not formidable enough in any way to challenge the League's established position.<sup>2</sup>

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1. IAR, 1940, vol.i, p.299.

2. See Lt.-Colonel C.B. Birdwood, A Continent Experiments, p.84.

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at present going on in India should not be followed by the Mussalmans. The Prophet had made the whole world for them and it had been ordained that they should love the whole world and rule over it. Their angle of vision should not be confined to India, Persia, Arabia or to any particular country.'

The whole purpose behind the establishment of Pakistan was to create a homeland for the Indian Muslims. Now the question automatically arises: Why did the religious fundamentalists like Maulana Abul Ala Maududi and his movement Jamaat-i-Islami oppose the creation of Pakistan? In view of Maududi's central role in the controversy over an Islamic constitution for Pakistan some consideration of his pre-partition political ideas is required. The Jamaat-i-Islami was founded in 1941 by Maududi, an Islamic scholar of repute, and a powerful writer and publicist. The objective of the movement was the establishment of the Islamic state. 'The ultimate goal of Islam is a world state in which the claims of racial and national prejudices would be dismantled and all mankind incorporated in a cultural and political system, with equal rights and equal opportunities for all... In their spirit and in their aims Islam and nationalism are diametrically opposed to each other.'<sup>1</sup> Maududi feared that Pakistan, when established, would be governed by Westernised leaders who wanted to establish a nation state on the Western model, that is, an irreligious and secular state, rather than a state based on Islamic ideology.<sup>2</sup> As Callard puts it, 'The background of the men who organised the campaign [for Pakistan] was not theology and Islamic law but politics and the common law, not Deoband but Cambridge and the Inns of Court.'<sup>3</sup> He regarded a state based on nationalism as 'kufr' and all those who took part in its government were 'sinners.'<sup>4</sup> So he pleaded that the Muslims should struggle for the propagation and adoption of an Islamic

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1. S.A.A.Maudoodi, Nationalism and India, p.10.

2. K.B. Sayeed, "The Jamaat-i-Islami Movement in Pakistan", Pacific Affairs, March 1957, p.60.

3. K. Callard, Pakistan: A Political Study, p.200.

4. Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953, p.243.

ideological concept in the whole of India and if they did this it was very likely that within a few years the whole of India would become Dar-ul-Islam or Muslim homeland.<sup>1</sup>

His intention during the period 1941-47 was to train and produce an honest and pious group of workers who would not only be inspired by Islamic fervour but also be capable of organising or managing the affairs of a modern state.<sup>2</sup> The constitution of the Jamaat-i-Islami of undivided India clearly laid down that a mere Muslim name, or birth in a Muslim family did not automatically qualify a man to become a member of this movement. To be admitted to the membership he had to observe all the practices of Islam and to refrain from drawing his income from sources condemned by Islam, such as interest, selling of liquor, dancing, music, bribery, etc. If he were a member of any constituent assembly he should resign his membership, and if he were connected with any un-Islamic government, in the capacity of governor, minister or judge, he should sever his connections with it.<sup>3</sup> Its organisation and membership afforded remarkable parallels with that of the Communist Party. Many times the potential leaders were observed and kept on probation before full membership was granted to them.<sup>4</sup> Maududi wanted to erect intact the ideal social system of an early Islam, and had an enormous influence over the religiously-minded Muslims in the universities of India in the early 'forties, who considered him to be the outstanding interpreter of modern Islam.<sup>5</sup> His influence over the thinking of middle-class Muslims had increased during the years preceding partition.<sup>6</sup>

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1. Sayeed, op.cit., pp.61-2.

2. Ibid., p.62.

3. Ibid.

4. Ibid., p.63.

5. W.C. Smith, Modern Islam in India, pp.149-50.

6. L. Binder, Religion and Politics in Pakistan, p.94.

The Islamic polity envisaged by Maududi has its constitution and laws conferred by God, the traditional canon of Islam. Sovereignty belongs to God. It will include its amir (supreme head), its advisory council, and judiciary. The amir will be elected and will exercise full authority in all respects and command complete obedience so long as he follows the Shariah. The amir may be criticised, sued in a court of law and even deposed. He will consult an advisory council, which may or may not be elected. The decisions of the council will not be binding on the amir. No one is eligible to any office if he seeks that office. There can be no party divisions in the Islamic advisory council. The judiciary will be independent of the executive.<sup>1</sup> Maududi did not like the word 'theocracy' to be attached to his system of government. He evolved a new concept 'theo-democracy', meaning 'divine democratic government' because under it Muslims have been given a limited popular sovereignty under the suzerainty of God. In the Islamic state all administrative matters and other questions which are not settled by the Quran and Sunnah will be decided upon by the consensus of those of sound judgement and learning in the Shariah.<sup>2</sup> He added: 'There is no difference between the sovereignty of the British and the sovereignty of a democratic form of Government'. 'From the Muslim standpoint, both forms of government are equally rebellious, impious, traitorous and wicked.'<sup>3</sup> An Islamic state will be an ideological state and those who do not believe in its ideology will be known as zimmis or non-Muslim citizens. They are not entitled to have any hand in shaping the fundamental policy of the state. Specific

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1. Maududi, Political Theory of Islam, pp.34-7.

2. Ibid., p20.

3. J.W. Sweetman, "Viewpoints in Pakistan I", Muslim World, April 1957, p.113.



rights and privileges have been accorded to them in the Shariah.<sup>1</sup> Women must remain behind purdah (seclusion), which keeps them from becoming 'hell on this earth' and 'storm centres of that satanic liberty which woman is seeking and which is threatening to demolish the entire structure of human civilization.'<sup>2</sup> In this direction Iqbal gave a new interpretation to Islamic political theory. 'The republican form of government', he observed, 'is not only thoroughly consistent with the spirit of Islam, but has also become a necessity in view of the new forms that are set free in the world of Islam.'<sup>3</sup> Iqbal did not have the peculiar problems of Pakistan before him, but what he stated about ijma (consensus of opinion) had a direct bearing on the problems. Iqbal said, '... the pressure of new world-forces and the political experience of European nations are impressing on the mind of modern Islam the value and possibilities of the idea of Ijma. The growth of republican spirit, and the gradual formation of legislative assemblies in Muslim lands constitute a great step in advance. The transfer of the power of Ijtihad from individual representatives of schools to a Muslim legislative assembly which, in view of the growth of opposing sects, is the only possible form Ijma can take in modern times, will secure contributions to legal discussion from laymen who happen to possess a keen insight into affairs. In this way alone we can stir into activity the dormant spirit of life in our legal system and give it an evolutionary outlook.'<sup>4</sup> The incorporation of a provision for separate ecclesiastical committee of ulama having power to supervise the legislative

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1. Maududi, Political Theory of Islam, pp.27-8.
  2. W.C. Smith, op.cit., p.149.
  3. Iqbal, op.cit., p.220.
  4. Ibid., p.241.

activity of the Majlis in the Persian constitution of 1906, had been condemned by Iqbal as a 'dangerous arrangement.'<sup>1</sup> The ulama might help and guide free discussion on questions relating to law. But the remedy lay in reforming 'the present system of legal education in Mohammedan countries, to extend its sphere, and to combine it with an intelligent study of modern jurisprudence.'<sup>2</sup> The claim of the present generation of Muslim liberals to re-interpret the fundamental legal principles, in the light of their own experience and the altered conditions of modern life was, therefore, perfectly justified.<sup>3</sup>

A section of the Deoband<sup>4</sup> leadership, through its public platform - The Jamiat-ul-Ulama-i-Hind, had become convinced that men like Jinnah and Liaquat Ali Khan were incapable of building up an Islamic state in Pakistan. The ulama concluded that Pakistan would be a secular state on the Western model and would not be different from Ataturk's Turkey.<sup>5</sup> In 1940, Maulana Husain Ahmad Madani, the head of the Deoband Academy, in his presidential address at the twelfth session of the Jamiat-ul-Ulama-i-Hind at Jaunpur (the United Provinces), remarked: 'These days the Pakistan movement is very popular among the (Muslim) masses. If it means the establishment in the Muslim majority provinces of an Islamic state based on the Prophetic traditions and the commandments of Islam, viz. "hudūd," "Qisās", and others, then it is really a very noble cause and no

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1. Iqbal, op. cit., pp.243-4.

2. Ibid., p.244.

3. Ibid., p.234.

4. Deoband is a small town in the district of Saharanpour in the United Provinces where a leading Muslim theological institution was established in 1867.

5. Ziya-ul-Hasan Faruqi, The Deoband School and the Demand for Pakistan, p.118.

Muslim will have any objection to it. But the fact is that, under the present circumstances, nobody can imagine the possibility of such a venture.<sup>1</sup> Of course, there were leaders, who, from the League platform, gave the impression that in Pakistan a sort of Islamic state based on the principles of the Quran and the Sunnah, would be established (for example, on November 9, 1945, Nawab Ismail Khan told his audience at Allahabad that the objective of the Muslim League was to establish a state based on the Shariah and the political philosophy of Islam). The utterances of responsible League leaders impressed a large number of ulama of different schools and a small section of the Deobandi ulama led by Maulana Shabbir Ahmad Osmani supported the demand for Pakistan. Osmani organised in 1946 Jamiat-ul-Ulama-i-Islam to counteract the activities of Jamiat-ul-Ulama-i-Hind and came over to Pakistan after its creation. Even Mandudi, for long an opponent of Muslim nationalism and the idea of separation, came to Pakistan, which he rationalised as the would-be laboratory for practical experiments in the religio-political philosophy of Islam.<sup>2</sup>

Jinnah seemed very clear about the problem in so far as the future constitution of Pakistan was concerned. There were some casual references in his various statements and speeches to Islam, the Quran and the traditions of the Prophet, but he never dreamt of making Pakistan a theocratic or a religious state.<sup>3</sup> Before partition, in an interview with Reuter's correspondent in New Delhi Jinnah was reported to have said that Pakistan would be a modern democratic state, with

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1. Ziya-ul-Hasan Faruqi, The Deoband School and the Demand for Pakistan, p.119.
  2. Ibid., pp.119f.n., 102-3f.ns.
  3. See Some Recent Speeches and Writings of Mr. Jinnah, vol.i, p.344, and vol.ii, pp.224, 325-8; Speeches-Quaid-i-Azam Mahomed Ali Jinnah as Governor-General of Pakistan, 1947-1948, pp.8-9, 58, 65.

sovereignty resting in the people, and the members of the new state would have equal rights of citizenship irrespective of their religion, caste or creed.<sup>1</sup> Jinnah's concept of the new state was enumerated in his inaugural speech, as incoming Governor-General, to the Constituent Assembly of Pakistan on August 11, 1947. He stated: '... work together in a spirit that everyone of you, no matter to what community he belongs ... no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations... We should begin to work in that spirit and in course of time all these angularities of the majority and minority communities... will vanish... You may belong to any religion or caste or creed - that has nothing to do with the business of the State... We are starting with this fundamental principle that we are all citizens and equal citizens of one State... that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State!'<sup>2</sup> In his broadcast talk to the people of the United States of America in February 1948, he stressed the same theme: 'I do not know what the ultimate shape of this constitution is going to be, but I am sure that it will be of a democratic type, embodying the essential principles of Islam.. In any case Pakistan is not going to be a theocratic State - to be ruled by priests with a divine mission. We have many non-Muslims- Hindus, Christians and Parsis - but they are all Pakistanis. They will enjoy the same rights and privileges as any other citizens and will play their rightful part in the

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1. Report of the Court of Inquiry, p.201.

2. CAPD, vol.i, pp.19-20.

affairs of Pakistan.'<sup>1</sup>

And so, it appears, that the founder of Pakistan envisaged a modern secular state: but his successors have never succeeded in defining exactly how far the principles of democracy, how far the principles of Islam ought to be the foundation of political organisation.

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1. Speeches-Quaid-i-Azam Mahomed Ali Jinnah as Governor-General of Pakistan, 1947-1948, p.65.

## CHAPTER IV

THE POLITICAL IDEAS OF M.K. GANDHI, SUBHAS CHANDRA BOSE,  
M.N. ROY AND JAYAPRAKASH NARAYAN.

## M.K. Gandhi

Gandhi's philosophy was largely drawn from Western thinkers - Tolstoy, Thoreau, Ruskin and Kropotkin. A recent study discovers his links with the English liberal tradition,<sup>1</sup> Sarvodaya being comparable with T.H. Green's concept of the common good and his emphasis on duties rather than rights being somewhat reminiscent of Bradley's observations on 'My Station and its Duties.' The main springs of his thinking were also linked with Hindu philosophical tradition.

Gandhi did not share his liberal predecessors' enthusiasm for parliamentary institutions. His comparison of the British Parliament to 'a sterile woman' and 'a prostitute',<sup>2</sup> clearly shows that India's political forms would not be a slavish imitation of the West. Gandhi's ultimate socio-political ideal was the non-violent stateless society. His Hind Swaraj, written in 1908, contained the basic ideals on which the future constitution of India would be based.

'That state will be the best which is governed the least,' declared Gandhi, and 'society based on non-violence can only consist of groups settled in villages in which voluntary co-operation is the condition of dignified and peaceful existence ...

The nearest approach to civilisation based upon non-violence is the erstwhile village republic of India.'<sup>3</sup> His

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1. B.S. Sharma, Gandhi as a Political Thinker.
  2. M.K. Gandhi, Hind Swaraj or Indian Home Rule, p.22.
  3. S.N. Agarwal, Gandhian Constitution for Free India, pp.39,58.

model for free India was a federation of village republics, Panchayat Raj. Gandhi's ideas about the future pattern of political organisation are to be found in Gandhian Constitution for Free India. The village republics shall be basic units of Swaraj Government enjoying maximum autonomy in social, economic and political affairs. The villages are to be linked with the taluka, district, province and national panchayat by a system of indirect elections except at the village level. Every village shall elect its panchayat and president or sarpanch. About twenty villages shall be grouped in a taluka panchayat, consisting of the elected presidents of the villages. A district panchayat shall be constituted from the presidents of the taluka panchayats, these in turn shall form the provincial panchayat. The provincial panchayat shall be the legislature of the province and shall be unicameral. The chief executive of the province shall be known as president who will be elected by the provincial panchayat. There shall be a council of ministers who though responsible to the legislature shall not be appointed from amongst the members of the provincial panchayat.

The ministers shall be selected on a non-communal and non-party basis. The presidents of the provincial panchayats shall constitute the all-India panchayat which shall be the central or national legislature and shall be unicameral. The head of state shall be the president of the national panchayat. With regard to the council of ministers it shall be exactly the same as in the case of provincial panchayat. The term of each of these bodies shall ordinarily be three years. There will be complete separation of executive and legislative functions both at the provincial and central level. The functions of the higher

bodies will be mainly advisory and co-ordinative. Defence, planning, communications, currency, international trade and foreign affairs shall be vested in the national panchayat, and residuary powers shall lie with the units. That means all-India panchayat shall be a voluntary federation of the provinces and states, with the largest measure of local autonomy for the federating units and reducing of the functions of the state. In this Gandhian Constitution the judicial system shall be re-organised so as to keep in line with the decentralised form of government. The primary and basic unit of judicial system shall necessarily be the village panchayat which shall enjoy extensive civil and criminal powers in judicial matters, there shall also be district courts, high courts and the supreme court to deal with the special cases.<sup>1</sup>

The state was to be non-violent, so Gandhi believed that armed defence was not necessary against foreign aggression. 'A truly non-violent nation would rather smilingly die to a man than meekly submit to the insolent invader.'<sup>2</sup> But many aspects of politics were not given adequate treatment, as for example, foreign affairs, the role of the public services and the machinery of law enforcement.

Gandhi stood against centralising tendencies in modern states. 'Centralization as a system', wrote Gandhi in 1942, 'is inconsistent with non-violent structure of society.'<sup>3</sup> 'I suggest,' he remarked in 1939, 'that, if India is to evolve along non-violent lines, it will have to decentralize many things. Centralization can not be sustained and defended without adequate force.'<sup>4</sup> He was against industrialisation and factory system. Machinery 'must not be allowed to displace necessary human labour.'<sup>5</sup>

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1. This account is based on S.N. Agarwal's Gandhian Constitution for Free India, chapters vi-x.

2. Ibid., p.110.

3. N.K. Bose, Selections from Gandhi, p.73.

4. Ibid., p.72.

5. Ibid., p.66.



'Simple tools and instruments' would be enough.<sup>1</sup>

Small-scale village industry allows little opportunity for fraud and speculation. Gandhi insisted that decentralisation of industry 'preserves the purity and compactness of domestic life, artistry and creative talent as well as the people's sense of freedom, ownership and dignity.'<sup>2</sup> Gandhi, however, was not opposed to every form of centralisation. He did not object to the centralisation and nationalisation of heavy industries, provided they formed only a minor part of national activity.<sup>3</sup>

'The heavy machinery for work of public utility which cannot be undertaken by human labour has its inevitable place, but all that would be owned by the state and used entirely for the benefit of the people.'<sup>4</sup> He regarded a highly centralised and powerful state as the greatest enemy of individual freedom and therefore looked upon an increase in the power of the state with the greatest concern, because it is destructive of human individuality which lies at the root of all progress.<sup>5</sup> Yet he held that 'there are certain things which cannot be done without political power,' even though there are 'numerous other things which do not at all depend upon political power.' A nation is truly democratic, he said, when it 'runs its affairs smoothly and effectively without much State interference.'<sup>6</sup> The non-violent society will not be pyramidal in structure as the modern state, it will be a highly decentralised society in which the coercive authority of the central government would be reduced to the minimum and every individual will have developed a high level of non-violence and self-control. 'The ideally non-violent state will be an ordered

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1. N.K. Bose, Selections from Gandhi, p.67.

2. Joan V. Bondurant, Conquest of Violence: The Gandhian Philosophy of Conflict, p.182.

3. Gandhi, Towards Non-violent Socialism, p.21.

4. D.G. Tendulkar, Mahatma, vol.iv, p.34.

5. Bose, op. cit., p.27.

6. G.N. Dhawan, The Political Philosophy of Mahatma Gandhi, p.341.

anarchy.'<sup>1</sup> 'My idea of village swaraj is,' he wrote, 'that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity.'<sup>2</sup> In such a state every one is his own ruler. 'He rules himself in such a manner that he is never a hindrance to his neighbour. In the ideal state, therefore, there is no political power because there is no state.'<sup>3</sup> He believed that the state should exist to fulfil the needs of its members, that 'the supreme consideration is man'<sup>4</sup> and that when the state ceases to perform services for its members which fulfil their needs, then the individual has the duty to disobey and to resist.<sup>5</sup> His ideal type of self-governing village shall have clean roads, temples and mosques, natural surroundings, dharmashala, a school and a small dispensary and shall attain self-sufficiency in food and clothing and should be capable of defending itself against robbers and wild animals. 'If all Indian villages could come up to the ideal,' Gandhi emphasised, then 'India would be free from most of its worries.'<sup>6</sup> India could not accept western models. 'I do not believe in mechanization of India. I think that rural reconstruction is possible.'<sup>7</sup>

It is interesting to note that both Gandhi and poet Tagore had by different routes reached the same conclusion - that the future of India lay in her villages. The Sriniketan or the Institute of Rural Reconstruction was Tagore's contribution to this doctrine. Gandhi's was on a national scale. All his political doctrine was coloured by his vision of India as an

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1. Tendulkar, op. cit., vol.v, p.389.
  2. Ibid., vol.vi, p.81.
  3. Bose, op. cit., p.41.
  4. Tendulkar, op.cit., vol.ii, p.212.
  5. Bondurant, op.cit., p.171.
  6. Tendulkar, op. cit., vol.i, p.327.
  7. Ibid., op. cit., vol.iv, p.202.

Integration of rehabilitated villages. Another Indian (excepting Tagore and Gandhi) who thought on the same line was C.R. Das, a prominent leader from Bengal. An Outline Scheme of Swaraj, drafted by C.R. Das, was presented to the Congress in early 1923 and urged the creation, after independence was granted, of a highly decentralised form of government, 'a maximum of local autonomy' and 'a minimum of control by higher centres.'<sup>1</sup> The organ of administration would be the panchayat, organised into village, town, district, provincial and all-India units of government.<sup>2</sup> According to Dr. Radhakamal Mukherjee, Indian type of decentralised democracy will not only be 'more adaptive and life-giving than the imitation of Western political methods, but will also be a distinctively Eastern contribution to the political history of man.'<sup>3</sup>

But none of these original ideas about the future pattern of political organisation in India could find favour with the large body of Western-educated Indians. They came into none of the serious constitutional proposals put forward by Indians before independence. The Nehru Report of 1928 envisaged for India the British model of 'a Parliament ... and an executive responsible to that Parliament.'<sup>4</sup> Gandhi did not put forward his indigenous model when he himself was present at the Round Table Conference in 1931. On the other hand, his reference to Ram Rajya aroused suspicion and fear among Muslims. The left-wing led by Jawaharlal Nehru was most concerned with the reconstruction of society on a socialistic basis. '... The failure of parliamentary democracy is not that it has gone too far, but that it did not go far enough ... it did not provide for economic democracy.'<sup>5</sup>

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1. C.R. Das, Outline Scheme of Swaraj, p.3.

2. Ibid., pp.4-12.

3. R.K. Mukherjee, Democracies of the East, p.xxv.

4. All-Parties Conference: Report of Committee (1928), pp.101,161.

5. J. Nehru, An Autobiography, p.530.

The Congress attitude to political organisation was expressed in a demand for a Constituent Assembly to determine the future structure of government (1934) and the formation of a National Planning Committee (1938) with Nehru as Chairman to co-ordinate the economic development of India.

### Subhas Chandra Bose

Subhas Chandra Bose was a critic of Gandhian political ideas and techniques. He believed that India's salvation would not be achieved under Gandhi's leadership. Hence he wrote: 'The logic of history will, therefore, follow its inevitable course. The political struggle and the social struggle will have to be conducted simultaneously. The Party that will win political freedom for India will be also the Party that will win social and economic freedom for the masses.'<sup>1</sup> In the 'thirties, Bose was a left-winger within the Congress with more radical and uncompromising views on social and economic issues. He said: 'That State on the advice of a planning commission, will have to adopt a comprehensive scheme for gradually socialising our entire agricultural and industrial system in both the spheres of production and appropriation.'<sup>2</sup> In May 1939, he formed his party, the Forward Bloc. According to him, the solution of India's problems required economic reforms on a socialistic basis. Since these reforms could not be put through under a democratic form of government, India 'must have a political system - a State - of an authoritarian character.'<sup>3</sup> He advocated 'a strong Central Government with dictatorial powers for some years to come ... government by a strong party bound together by military discipline.'<sup>4</sup> While on another occasion he spoke of the efficacy

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1. S.C. Bose, The Indian Struggle, 1920-1942, p.298.

2. IAR, 1938, vol.i, p.341.

3. Bose, The Indian Struggle, 1935-1942, p.116.

4. S.C. Bose, The Indian Struggle, 1920-1942, p.312.

of a strong dictator. India 'suffers from so many political ills that only a ruthless dictator can cure her.'<sup>1</sup> Bose was certain that Communism would not succeed in India for a number of reasons. Communism is opposed to nationalism in any form. Russia is no more interested in provoking a world revolution. He also felt that many of the economic ideas of Communism might make a strong appeal to Indians but the Indian people could not be expected to respond sympathetically to the anti-religious and atheistic Communism because in India there is no positive hostility against religion as such. Even among those who would be disposed to accept the economic ideas of Communism there would be great reluctance towards the adherence to the doctrine of materialistic interpretation of history. In his opinion, Communism has made no new contribution in the field of monetary theory but has simply followed traditional economics.<sup>2</sup>

There can be no denial of the fact that Bose had emotional leaning towards the strong ways of the fascist dictators. Bose had regarded Mussolini as 'a man who really counts in the politics of modern Europe.'<sup>3</sup> He regarded Gandhi's visit to Italy and his meeting with Mussolini in 1931 as an occasion of historic significance. He wrote: '... the Mahatma rendered great public service by his visit to Italy. The only regret is that he did not stay there longer and did not cultivate more personal contacts.'<sup>4</sup> Jawaharlal Nehru in The Discovery of India points out that in 1938 when Bose was the President of the Indian Nation Congress, 'he did not approve of any step being taken by the Congress which was anti-Japanese or anti-German or anti-Italian. And yet such was the feeling in the Congress and the country that he did not oppose this or many other manifestations of Congress sympathy

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1. H. Toye, The Springing Tiger, p.60.

2. Bose, The Indian Struggle, 1920-1942, pp.314-5.

3. Ibid., p.231.

4. Ibid.

with China and the victims of fascist and nazi aggression. We passed many resolutions and organized many demonstrations of which he did not approve during the period of his presidency but he submitted to them without protest because he realized the strength of feeling behind them.<sup>1</sup>

Bose pointed to a new way for India, a middle way which lay in the synthesis between Communism and Fascism. He called the new synthesis 'Samyavada.'<sup>2</sup>

Bose was never convinced of the Gandhian path of non-violence to win freedom for India. He secretly escaped from India in January 1941 to seek the help of the Axis powers to fight against the British. In 1942, Bose organised the Indian National Army (I.N.A.) of about thirty thousand men,<sup>3</sup> mostly recruited from Indian prisoners of war captured by the Japanese during the Second World War, to liberate India from British rule. This was the army of 'Free India', a 'Provisional Government' that claimed to be a national state under the presidency of Bose and was recognised by nine independent states.<sup>4</sup> The Provisional Government aimed at liberating India 'from the British yoke, through an armed struggle,'<sup>5</sup> and the mission would be accomplished when the freedom was won: the form of government would be decided by the Indian people themselves according to their own choice.<sup>6</sup> But his military adventure failed to achieve the objective.

#### M.N. Roy

M.N. Roy was brought up in an orthodox Brahmin family. He was deeply influenced by the writings of Vivekananda and at the

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1. J. Nehru, The Discovery of India, p.429.
  2. Bose, The Indian Struggle, 1920-1942, pp.313-4.
  3. A.J. Barker, The March on Delhi, p.252. An Indian writer puts the figure at 60,000. See C.S.Samra, "Subhas Chandra Bose: An Indian National Hero" in R.L. Park and I. Tinker (eds), Leadership and Political Institutions in India, p.81.
  4. Maj. Gen.A.C. Chatterji, India's Struggle for Freedom, p.v.
  5. Selected Speeches of Subhas Chandra Bose, p.217.
  6. Ibid., p.156.

same time he was attracted by the revolutionary movement, specially by the writings of Brahmabandhav Upadhyaya.<sup>1</sup> In his earlier years he became one of the leaders of the most daring group of political anarchists. It was during his stay in Mexico that he abandoned his previous position as an anarchist and became a Marxist. In 1918, he founded the Communist Party of Mexico. In 1919, he became a member of the Communist International,<sup>2</sup> and was actively associated with the formation of the Communist Party of India at Tashkent towards the end of 1920.<sup>3</sup> From 1920 until 1928 he was the doyen of the Indian Communists and was in charge of the direction of communist affairs in the Indian sub-continent, and it was under his leadership that the communist movement in India was launched.<sup>4</sup>

The experience of the nationalist movement made Roy doubtful about its possibilities, its method as well as its 'spiritualist' ideology. 'Marxism appeared to indicate a more realistic and effective approach to the problems' which had puzzled him.<sup>5</sup> Writing in 1926, he had advocated the formation of a People's Party for India binding together the petty-bourgeoisie, the peasantry and the proletariat as an alternative to the Congress. Its programme was to include (a) complete independence, (b) the establishment of a republican government, (c) radical agrarian reforms, and (d) advanced social legislation.<sup>6</sup> He ridiculed the demand of a national government as 'fashionable but fraudulent'<sup>7</sup> because it would be controlled by the Indian capitalist class and would be a fascist dictatorship through the instrumentality of its party, the Congress. The slogan of national unity he regarded as mythical and a 'dangerous fiction.'<sup>8</sup> In 1928, he severed his

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1. "M.N. Roy: A Short Biographical Note" in S. Roy (ed.), M.N. Roy, Philosopher-Revolutionary, p.65.
  2. M.N. Roy, "An Autobiographical Statement" in ibid., pp.3-4.
  3. Muzaffar Ahmad, The Communist Party of India and its Formation Abroad, pp.33,48.
  4. See David N. Druke, Soviet Russia and Indian Communism, ch.ii.
  5. Roy, Politics, Power and Parties, p.2.
  6. Roy, The Future of Indian Politics, p.117.
  7. Roy, National Government or People's Government? ch.iv.
  8. Ibid., pp.54-5.

relations with the Communist International for reasons of disagreement regarding both the theory and practice of Communism. He then joined the Congress, but left the organisation with the outbreak of Second World War because of disagreement on the question of co-operation with the war effort, as his advocacy of support to the Allied Powers was incompatible with the Congress policy of anti-war activities.<sup>1</sup>

Roy founded the Radical Democratic Party of India in 1940. In December 1944, Roy wrote and published A Draft Constitution of Free India in which he outlined the political structure of a radical democratic state which would avoid the drawbacks of parliamentary democracy as well as the Soviet system. His draft was addressed to those who desired 'freedom and progress', and he claimed that 'a large volume of popular opinion has been expressed' in favour of the draft.<sup>2</sup> The pyramidal structure of the state will be raised on the foundation of organised local democracies. The local democracies will be responsible for making individual citizens fully conscious of their sovereign rights and will train them for an intelligent use of the rights. The People's Committees are to be the basic units of organised democracies. The Committees shall be organised in villages, towns and cities. The Committees will be elected each year by the adult population of both sexes of the respective localities; and the number of members who will constitute the People's Committees will be one-fiftieth of the total number of voters in the locality. The Committees have been endowed with wide powers and can exercise influence on similar Committees for larger areas. They will function as an electoral college to elect deputies of the Federal Assembly and the Provincial People's Councils. The Committees will have the right of recall of the Governor-General,

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1. Roy, "An Autobiographical Statement" in S. Ray (ed.), M.N. Roy, Philosopher-Revolutionary, p.4.
  2. Roy, Constitution of Free India: A Draft, p.5.



the provincial Governor and the representatives in the Provincial People's Council and the Federal Assembly, if they fail 'to act according to the mandate' of their constituents. They will have the right of referendum on the legislative and executive measures of the federal and provincial governments, and they can initiate legislation to be considered by the Provincial People's Council and the Federal Assembly.<sup>1</sup>

The 'Federal Union of India' shall consist of the British Indian provinces delimited 'on the basis of linguistic and cultural homogeneity' and the Princely States, with the right of secession of the constituent units from the Union.<sup>2</sup> The central legislature will consist of two chambers, the Federal Assembly and the Council of State. The Federal Assembly will be elected every four years and will be composed of the deputies of the people of the federal union and there shall be one deputy for every 500,000 population. In the case of cities and towns with a larger population the proportion shall be one deputy for 250,000 population.<sup>3</sup> The general law-making powers have been vested in the Assembly. All legislations enacted by the Assembly except defence, foreign affairs, currency and communications are to be submitted for endorsement of provincial legislatures. 'In cases of conflict between a federal law and a provincial law, the former shall prevail.'<sup>4</sup> The members of the Council of State will be appointed for six years by the provincial governments (the number of members being equal for all provinces). The Council will represent professional groups - engineers, economists, scientists, medical men, jurists, historians, civil servants and others engaged in the advancement of human knowledge in philosophy and the social sciences. This Council will

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1. Roy, Constitution of Free India: A Draft, pp.14-5, 18.

2. Ibid., pp.16-7.

3. Ibid., pp.18-9.

4. Ibid., pp.23-4.

have the power of planning the development of society in all spheres and to guide and supervise the execution of the plans. There shall be a 'Planning Authority', composed of experts in the state enterprises, industrial and agriculture, to be subordinated to the Council.<sup>1</sup> The Supreme People's Council, the highest organ of state authority, will be composed of the Governor-General, the Council of State and the Federal Assembly.<sup>2</sup> The head of state will be known as Governor-General. The Governor-General will be elected directly for five years by all the people, men and women, who have attained the age of eighteen years. He will have the power to preside over all the joint sessions of both the chambers meeting as the Supreme People's Council, and he can order dissolution of the Federal Assembly with the recommendation of the Prime Minister and the election of a new Assembly. The Governor-General has the right to dissolve the Assembly in his own discretion provided that a majority of the People's Committees in the Union will support dissolution.<sup>3</sup> There shall be a council of ministers to carry on the government of the federal union. The Governor-General will invite a member, known as the Prime Minister, to form the government; he will select other members of the cabinet from the members of the Assembly. The Council of ministers shall in all matters be collectively responsible to the Supreme People's Council and will remain in office so long as it will enjoy the latter's confidence.<sup>4</sup> The Supreme People's Council will give the final sanction to all legislative and executive measures of the government.<sup>5</sup>

The composition of the provincial governments will be the same as in the case of central government. The judiciary has been

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1. Roy, Constitution of Free India - A Draft, pp.20-1, 31.
  2. Ibid., p.17.
  3. Ibid., pp.19, 22.
  4. Ibid., p.25.
  5. Ibid., p.22.

assigned the same role as in all democratic states.

Roy in his draft envisaged large-scale industries under collective ownership and the promotion of the productivity of labour through the introduction of modern mechanical means of production under state control.<sup>1</sup> Certain features of his draft might be regarded as 'innovations' and were 'repugnant to orthodox constitutional theorists.'<sup>2</sup> It is difficult to see how far his decentralised political structure can be compatible with a 'Planning Authority' and the Council of State, which are endowed with the authority of planning the society in all fields.

In the last years of his life Roy became an exponent of 'Radical or New Humanism'. The Radical Democratic Party was dissolved in 1948, when it appeared that party politics was incompatible with the philosophy of Radical Humanism. He had himself, in October 1947, described the shift in his outlook in the preface to his Scientific Politics: 'Seven years ago, I still spoke as an orthodox Marxist criticising deviations from, or faulty understanding of the pure need. Nevertheless, the tendency to look beyond Communism was already there in a germinal form. While still speaking in terms of a class struggle, I laid emphasis on the cohesive factor in social organisation. Already then I appreciated Marxism as something greater than the ideology of a class. I understood it as the positive outcome of earlier intellectual efforts to evolve a philosophy which could harmonise the processes of physical nature, social evolution and the will and emotions of individual man'.<sup>3</sup> In his lecture at the Indian Renaissance Institute, Dehradun, in May 1948, he explained the reasons: '... I have never been an orthodox Marxist. My attitude to Marxism was critical from the very beginning. The experience again, the attempt to solve the

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1. Roy, Constitution of Free India - A Draft, p.12.

2. Ibid., p.9.

3. Roy, Scientific Politics, p.viii.

problems of life with the help of Marxism, brought me to the conclusion that Communism also was not a cure-all. I came to the conclusion that until the intellectual, cultural, spiritual atmosphere of the country was changed; it was not possible to bring about a political and economic reconstruction of the country...<sup>1</sup>

But Sibnarayan Ray, Joint-Editor, The Radical Humanist, sees no basic change in Roy's philosophy. 'Roy was essentially a humanist from the earliest period of his life of which we have any record to the end of his days, and the philosophy which he evolved during the last few years was the culmination of his life-long pursuit.'<sup>2</sup> However, Roy wanted to restate 'the Humanist, libertarian, moralist spirit of Marxism' after freeing it from the fallacy of economic determinism.<sup>3</sup>

Roy was deeply critical of Western democracies. His critique of parliamentary democracies is that they are not truly democratic. With the growth of the party system, the individual has completely disappeared from politics, either as a candidate for election or as voter. The idea of popular sovereignty has become 'a constitutional fiction.'<sup>4</sup> The majority of the people are 'driven like cattle to the polling stations to cast their votes.' The individual citizen is cut off from the business of government during the long periods between successive elections and possess few opportunities of controlling the decisions of government. Citizens receive no continuing education in the exercise of their rights.<sup>5</sup>

Politics has 'degenerated into a scramble for power' between the parties. Here is his most vehement criticism of the party system: 'Though the party system is believed to be the essence of democracy,

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1. Roy, Politics, Power and Parties, p.2.

2. S. Ray (ed.), op. cit., p.32.

3. Roy, New Humanism, p.18.

4. Roy, Politics, Power and Parties, p.67.

5. Ibid., p.53; S. Suri, "From Marxism to Radical Humanism: M.N. Roy's Political Evolution", in S. Ray (ed.), op.cit., pp.50-1.

it has done more harm to democracy than anything else. It has reduced democracy to demagogy. The most skilful demagogue is the most successful democrat. In all probability, those who make the big promises may really want to do good things. But engaged in the game of power, they must play it according to its rules .... Degraded to the formality of counting heads, democracy does not bother about what is in the heads. If the heads are empty of sense, the party getting the largest number of votes will have the largest amount of ignorance as its sanction'.<sup>1</sup> Party politics, according to Roy, is a denial of democracy and the surrender of popular sovereignty.

His goal was to transform democracy in its institutional framework of legislatures and parties into a partyless democracy in which the power would remain with the local republics, to be wielded directly by the individual members of the small communities. This 'decentralised structure' would make a more 'direct form of Democracy a practical proposition.'<sup>2</sup> '... The foundation of a decentralised State will have been laid in local republics, which will combine all functions of the State as they affect the local life. National culture, national economy and national political institutions will be cast on the pattern of the functions of these local republics; power will remain with them, to be wielded directly by the individual members of the local communities. Being thus reared upon a broad foundation of direct democracies, the State will be really democratic.'<sup>3</sup> Rousseau's influence on Roy is discernable here. Rousseau's idea of democracy was cast in the mould of the city republics of ancient Greece. There democracy had been practised in small areas, inhabited by not more than ten to

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1. Roy, Politics, Power and Parties, p.192.

2. Ibid., pp.55-6.

3. Ibid., p.77.

twenty thousand souls. In the eighteenth century Europe when national states embraced large territories and vast populations, direct democracy was evidently not possible. The solution of the problem was found in the doctrine of representative government. But this representative government and the party system gradually led to the denial of democracy. In seeking a solution to the greatest problem of our time Roy made use of the concept of Rousseau in his decentralised democratic structure. But Roy was aware that Rousseau's doctrine of a general will led to the totalitarian regime in France itself during the reign of Robespierre, and subsequently <sup>in</sup> Russia and Germany.<sup>1</sup>

Roy called for the replacement of politics of power by politics of freedom. In building any social or political organisation his primary consideration was the individual freedom. A political organisation is to be judged by the actual measure of freedom it gives to the individual. He realised that 'A new world of freedom will not result automatically from an economic reorganisation of society. Nor does freedom necessarily follow from the capture of political power by a party claiming to represent the oppressed and exploited classes ... By disregarding individual freedom on the pleas of taking the fullest advantage of technology, of efficiency and collective effort, planned economy defeats its own purpose ... Economic democracy is no more possible in the absence of political democracy than the latter is in the absence of the former.'<sup>2</sup> He regarded human history as 'the record of man's struggle for freedom'<sup>3</sup>

Contrasted with his previous position in favour of large-scale industries and planning under state control, Roy in his later

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1. Roy, Reason, Romanticism and Revolution, vol.ii, pp.269-70.

2. Roy, New Humanism, p.39.

3. Roy, Reason, Romanticism and Revolution, vol.i, p.5.

years championed a 'co-operative economy' - a form of economy based on widespread decentralisation and a spirit and practice of co-operation. Production and distribution are to be carried on with the sole purpose of serving human needs. The most effective instrument is to form consumers' and primary producers' co-operatives.<sup>1</sup> Thus alone the corrupting influences of vested interests can be eliminated.

Roy's 'New Humanism' was not to be confined to the boundaries of any state. As he wrote: 'New Humanism is cosmopolitan. A cosmopolitan commonwealth of spiritually free men will not be limited by the boundaries of national States, - capitalist, fascist, socialist, communist, or of any other kind, - which will gradually disappear under the impact of the twentieth century Renaissance of Man.'<sup>2</sup> The contemporary crisis of modern civilisation could be resolved only by 'A brotherhood of men attracted by the adventure of ideas, keenly conscious of the urge for freedom, fired with the vision of a free society of free men, and motivated by the will to remake the world, so as to restore the individual in his position of primacy and dignity.'<sup>3</sup>

Almost in Gandhian terms, Roy stated that 'Without moral men, there can be no moral society.'<sup>4</sup> The conduct of public affairs, therefore, should be in charge of 'spiritually free individuals' accountable 'to their respective conscience.'<sup>5</sup> His emphasis upon 'spiritually emancipated moral men',<sup>6</sup> 'detached individuals',<sup>7</sup> reminds one of the Platonic concept of 'philosopher-ruler'. In order to bring about 'a philosophical revolution' and 'a mental revolution',<sup>8</sup> among the young intellectuals of India, he established

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1. Roy, New Humanism, p.69.

2. Roy, Reason, Romanticism and Revolution, vol.ii, p.310.

3. Ibid.

4. Roy, Politics, Power and Parties, p.41.

5. Roy, Reason, Romanticism and Revolution, vol.ii, p.279.

6. Ibid., p.310.

7. Ibid., p.81.

8. Roy, Politics, Power and Parties, p.197.

the Indian Renaissance Institute, Dehradun, on the pattern of Plato's Academy. As Roy himself observed: '... The future of democracy in our country depends on people who are either outside politics today, or who will have the courage and vision to step out of the indecent scramble. They will have to act in a manner which may not attract the "practical Politicians." They may have to plough a lone furrow for some time.'<sup>1</sup>

### Jayaprakash Narayan

Jayaprakash Narayan began his political career as a Marxist. While he was studying in the United States of America in 1922-1929, Jayaprakash came in close contact with some communist students, avidly read the classics of Marxism and became a Marxist. M.N. Roy's pungent writings exercised a profound influence on him. The thrilling success of the great Lenin seemed to establish beyond doubt the supremacy of the Marxian way to revolution.<sup>2</sup> This process was reinforced by the mode of life in the U.S.A. Coming from the lower middle class he hardly received any help from his family. He had to work as an ordinary worker in field and factory to earn his living and to bear the expenses of university education. The wide study of communist literature persuaded him to believe that Gandhi was against the social revolution and would at a moment of crisis hasten to uphold the system of exploitation and inequality.<sup>3</sup> Thus it was as a Marxist that Jayaprakash returned to India in 1929 and came into close contact with Gandhi and Nehru and resumed his place in the nationalist movement. Towards the end of 1929 he differed with the Indian communists and their brand of Marxism because they were only following the policy laid down by the Third Communist International

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1. Roy, Politics, Power and Parties, p.195.

2. J.P. Narayan, From Socialism to Sarvodaya, p.10.

3. Ibid., p.11.



which by then had come completely under the leadership of Stalin. In his opinion, the Comintern had been following since 1928 a mistaken policy which had resulted in the division of the working class and socialist movements throughout the world and in the isolation of the communists from the nationalist movements in all the colonial countries. This was contrary to Marxist theory generally and specifically to the famous colonial policy enunciated by Lenin. The differences with the CPI thus marked the beginning of his ideological alienation from Soviet Communism.<sup>1</sup> In 1934 he, along with other non-Communist Marxists,<sup>2</sup> formed the Congress Socialist Party so that the social policy of the Congress might become more definitely socialist and the fight for independence itself might be conducted in a more revolutionary manner. The decision to follow an independent line of activity did not mean, however, the lessening of faith in Marxism. Rather, the founders of the CSP were convinced that they alone were applying Marxism correctly to the Indian situation and the Communists were wrong. A CSP-CPI alliance was formed in view of a change in communist tactics in India in 1934, following a new directive from the Comintern. According to the new line Congress was no longer to be boycotted by the CPI but supported as an anti-imperialist national front. The membership of the CSP was opened to the communists and some of them held important positions in the organisation. But the communists were infiltrating into the CSP with the ultimate objective of destroying it. Consequently, the idea of a united Socialist-Communist Party was abandoned, and in 1940 the communists were expelled from the CSP. Jayaprakash's experiences with the CPI convinced him that there could not be any

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1. Narayan, From Socialism to Sarvodaya, p.13.

2. Achyut Patwardhan, Ashok Mehta, M.R. Masani and Yusuf Meherally.

unity with an 'official' Communist Party. Certain events in Russia particularly the trials of renowned Russian communist leaders powerfully influenced his thinking. Communistss wherever in power, had invariably established a dictatorship and the end justified the means as the basis of political action. He saw in the Soviet experiment not only a denial of 'formal' freedom, but also denial of social justice, of equality and the growth of a new class of bureaucratic rulers, of new forms of exploitation. All these events and experiences prompted him to re-examine the basic postulat~~y~~es of Marxism. But yet he did not completely abandon Marxism. He designated his new philosophy as 'democratic socialism'. This phase began as early as 1940, and continued till 1952.<sup>1</sup> During the years 1940-46, he thought in terms of a mass revolution and was imprisoned several times for taking part in revolutionary activities. He pleaded for the setting up of units of 'Revolutionary Government' with 'their own police and militia.'<sup>2</sup> He had drawn his own picture of a socialist India where both economic and political democracy would prevail. 'In this democracy', he emphasised, 'man will neither be slave to capitalism nor to a party or the State. Man will be free'.<sup>3</sup> He pointed out that there could be 'no room for dogmatism or fundamentalism in Marxist thought'. The socialist movement in India must evolve its own socialism in the light of Marxist thought, of contemporary world history, and objectiv~~e~~ conditions prevailing in India and its historical background.<sup>4</sup> He advocated the peaceful democratic method to achieve socialism because the violent method and dictatorship had been tried in Russia and 'it has led to something very different, i.e. to la bureaucratic

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1. Narayan, From Socialism to Sarvodaya, pp.13-9, 22; B. Prasad's "Introduction" in Narayan, Socialism, Sarvodaya and Democracy, pp.xi, xiv.
  2. Narayan, Towards Struggle, p.21.
  3. Narayan, Socialism, Sarvodaya and Democracy, p148.
  4. Ibid., p.41.

State, in which democracy does not exist'. 'I should like to take a lesson from history,' he said.<sup>1</sup> In 1947 the CSP assumed its new name, the Socialist Party, and decided to break away from the Congress and function as an independent party so as to 'accustom the people to the idea that to be opposed to the Congress is not to be opposed to the nation, but rather to be opposed to certain policies and methods of government and to advocate alternative policies ... to attempt by democratic methods to replace it as the party in power.'<sup>2</sup> The recent world events and happenings in India (particularly the Hindu-Muslim riots and the assassination of Gandhi) convinced Jayaprakash that 'nothing but good means will enable us to reach the goal of a good society, which is socialism'.<sup>3</sup> 'The experience of totalitaritarian countries', he observed, 'whether fascist or communist, has shown that if the State is looked upon as the sole agent of social reconstruction, we get nothing but a regimented society in which the State is all-powerful and popular initiative is extinct and the individual is made a cog in a vast unhuman machine. Such a society is not the objective of our Party; nor could a society of this nature ever be an intermediate stage in the evolution of the democratic socialist society that is our aim'.<sup>4</sup> His questioning and re-thinking was gradually bringing him nearer to Gandhi. Writing in 1951, he himself explained the shift in his outlook: 'For many years I have worshipped at the shrine of the goddess - Dialectical Materialism - which seemed to me intellectually more satisfying than any other philosophy. But while the main quest of philosophy remains unsatisfied, it has become patent to me that materialism of any sort robs man of the means to become truly human. In a material civilisation man has no rational incentive to be good.'

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1. Narayan, Socialism, Sarvodaya and Democracy, p.51.

2. Ibid., p.58.

3. Ibid., p.60

4. Ibid., p.61.

It may be that in the kingdom of dialectical materialism fear makes men conform and the Party takes the place of God. But when that God himself turns vicious, to be vicious becomes a universal code'.<sup>1</sup> He found that the main concern of the democratic socialists was with the capture of power. Decentralisation, he believed, could not be effected by handing down power from above to people, because people's capacity to govern themselves had been frustrated by the party system and the concentration of power at the tope. The process must be started from the bottom.<sup>2</sup> He wrote: 'The party system with the corroding and corrupting struggle for power inherent in it, disturbed me more and more. I saw how parties backed by finance, organisation and the means of propaganda could impose themselves on the people; how people's rule became in effect party rule; how party rule in turn became the rule of a caucus or coterie; how democracy was reduced to mere casting of votes ...'<sup>3</sup> In order to remove the defects of the party system he 'toyed for some time with the idea of a co-operative, rather than a competitive system of parties.'<sup>4</sup> He gave up the idea because 'the experiment could not succeed within the given framework of struggle for power and the system of parliamentary democracy'. But still he believed 'that given the psychological climate for it, such a political experiment might yet be made.'<sup>5</sup> The disillusionment with democratic socialism and parliamentary democracy led him to seek a better substitute and this he found in the Gandhian principle of 'people's self-rule'. His final break with Marxism came in 1952. In 1954, he offered himself as a Jeevandani, that is, to withdraw from party and power politics and to devote his life to the bhoodan and sarvodaya movement, two of the key concepts in modern Indian political thought.<sup>6</sup>

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1. Narayan, Socialism, Sarvodaya and Democracy, p.98.

2. Narayan, From Socialism to Sarvodaya, p.35.

3. Ibid., pp.34-5.

4. Ibid., p.36.

5. Ibid.

6. H. Tinker, India and Pakistan, p.57.

In 1957, he formally resigned from the Praja Socialist Party which was born in 1952 out of the merger of the Socialist Party and the Kisan Majdoor Praja Party. The process of travelling from Marxism to democratic socialism and then to Sarvodaya reflected the changes in the political thinking of Jayaprakash. Unless socialism was transformed into Sarvodaya, the socialist goals of freedom, equality, brotherhood and peace could not be attained. Sarvodaya means 'a society which would strive for the good of all'<sup>1</sup> and would create and develop forms of socialist living through the voluntary endeavour of the people rather than seek to establish socialism by the coercive power of the state - lokniti (politics of the people) as distinct from rajniti (politics of the state). He explained that he had decided to withdraw from party and power politics because politics could not deliver the goods. This alternative to politics had already been shown by Gandhi. Gandhi proposed that the Congress should withdraw from the field of politics and turn itself into what he called a Lok Sevak Sangh.<sup>2</sup>

Like Roy, Jayaprakash is a pungent critic of parliamentary democracy. In parliamentary democracy of the twentieth century, he finds an 'inherent tendency towards centralism.' 'At one extreme of its political spectrum is the national state and at the other the individual voter, with a blank in between.' The local bodies have little self-government powers and no direct or indirect influence on the national state. 'The issue of power in such state is decided not by the fictitious "people" but by a balance between political parties and such organized interests as industrialists and bankers and powerful labour unions. The people represents a wholeness, while the organised interests are sectional.'<sup>3</sup> He discards that political

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1. Narayan, A Picture of Sarvodaya Social Order, p.51.
  2. Narayan, From Socialism to Sarvodaya, pp.32-3.
  3. Narayan, A Plea for Reconstruction of Indian Polity, pp.67-8.

system which bases government on a sum of individual voters. 'The State cannot be an arithmatic sum of individuals. The people, the nation, the community can never be equated with the sum of individual voters.'<sup>1</sup> He recognises, however, that there has been a substantial measure of local self-government in the mature democracies of the West, but still the central government is all-powerful, 'government and decision-making do remain the privilege of the few. Except in Switzerland and perhaps the Scandinavian countries. Western democracy is little more than government by consent.'<sup>2</sup> He observes: '... the Western concept of democracy as government by consent ... is not an adequate enough concept, and that we should profit from the experience of the West and try to move forward towards a more adequate democracy. The next step beyond government by consent is people's participation in government, or a participating democracy.'<sup>3</sup> He regards parliamentary democracy as 'something foreign to India' and 'implanted from outside'. In India 90 per cent of the people do not understand this system at all.<sup>4</sup> By merely creating formal institutions, such as adult franchise, party system and parliament, parliamentary democracy cannot be developed in India. He says: 'It is not only through the representative assemblies and elected governments that democracy works but in an equally true sense through the voluntary associations and actions of the citizens which they carry on and establish to deal with their problems, promote their interests and manage their affairs.'<sup>5</sup> He asks: '... could we not find something more Indian, something more suited to the soil, some system which the people themselves could understand, which had come out of their hearts, which would not be so foreign to them? Are we wedded to this one system of parliamentary

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1. Narayn, A Plea for Reconstruction of Indian Polity, pp.63.

2. Narayan, Socialism, Sarvodaya and Democracy, pp.243-4.

3. Ibid.

4. Narayan, Towards a New Society, pp.86-7.

5. Narayan, A Plea for Reconstruction of Indian Polity, pp.10-1.

democracy so much so that even our minds must refuse to think of an alternative?<sup>1</sup>

In his A Plea for Reconstruction of Indian Polity, a draft published in 1959 for private circulation, Jayaprakash has given serious thought to the problem of reshaping the Indian political system and pleads for the replacement of the parliamentary system, by a new kind of polity, more akin to India's tradition and consistent with the true nature of man and community. This he calls 'communitarian' and 'participating' democracy. The issue before India, he says, 'is a much more comprehensive one, namely, that of the nature of polity most suitable for us at this juncture. Further, it is also necessary to remember that polity, whatever its nature, does not function in a vacuum, but has to fit into the larger social entity and subserve the larger social purpose.'<sup>2</sup> In Marxian terms, he describes his polity as the 'most suited' for India and 'most rational and scientific' and 'would be in the line with the natural course of social evolution.'<sup>3</sup> He acknowledges that he has been 'influenced a great deal' by Gandhi's ideas<sup>4</sup> and there is also the influence of Roy on the evolution of his thought.<sup>5</sup> Jayaprakash, of course, looks further than Gandhi in setting the village within a broader framework. He likes to build up his 'communitarian society' from what he terms the 'primary' or 'regional community'; an association of neighbouring villages, communities or townships. The internal administration of the primary or regional community shall be autonomous. Regional communities will form a district community. The district communities will federate together to form the provincial community, and they in turn will come together to form the national community.<sup>6</sup> Jayaprakash, like his predecessors, Gandhi and Roy, has visualised a world community, based on that

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1. Narayan, Towards a New Society, p.89.

2. Narayan, A Plea for Reconstruction of Indian Polity, p.iii.

3. Ibid., pp.iii-iv.

4. Ibid., p.iii.

5. Narayan, Socialism, Sarvodaya and Democracy, p.240.

6. Narayan, A Plea for Reconstruction of Indian Polity, pp.54-8.

'unity of spirit', as Tagore has called it, which makes the entire human race one single nation, in spite of differences of colour, creed or religion.<sup>1</sup>

The villagers will choose a council, the gram sabha, for their primary community 'by general agreement or by drawing lots'. Contested elections along party lines are to be avoided. The political structure will rise storey by storey from the foundation. This council will send representatives to the district community, and the district community in turn will send representatives to the national community. The village and nation are linked together through these intermediary bodies. All adult members can participate at the village level, and indirectly all are involved at the higher levels. This method of choosing representatives discards the Western principle of 'one man, one vote'. The executive functions at each level will be entrusted to small committees. The committees will have a chairman and a secretary. There will be an over-all supervisory and co-ordinating body, known as co-ordinating committee, consisting of the representatives from each committee, and its decision will be binding on all committees. Each community can legislate in their own allotted spheres. There will be no post of ministers, Chief Ministers or Prime Minister at the provincial or national level. Government will be conducted by committees assisted by paid preferably honorary civil servants. His solution to the problem of bureaucracy is direct self-government of the people, general control and direct supervision over the civil servants to be exercised by the people and their elected governments.<sup>2</sup>

Jayaprakash hopes to replace the centralisation of political power and authority by decentralisation and minimising the vast responsibilities of the central government in the economic and social

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1. Narayan, A Plea for Reconstruction of India Polity, pp.92-93-See also Narayan, Three Basic Problems of Free India.

2. Narayan, A Plea for Reconstruction of Indian Polity, pp.54-62, 85-107.



fields. '... As we proceed from the inner to the outer circles of communal life and organisation, there is less and less to do for the outer community; so that, when we reach the circle of the National Community it has only a few matters to attend to, such as defence, foreign relations, currency, interprovincial co-ordination and legislation.'<sup>1</sup> At present the Indian planning 'does not begin with the village and the region and go upwards, but from the centre, going downwards.'<sup>2</sup> This process is to be reversed. 'Planning would begin from the primary community and therefrom fan outwards. In our scheme of things the regional plan, i.e., the plan of the regional community, would be the pivotal plan. This would mean that the regional plan - and not the village plan, which would be too small for the purpose - would be the unit out of which the whole national plan have to be constructed.'<sup>3</sup> Gandhi was generally against industrialisation, whereas Jayaprakash tries to make a balance of agriculture and industry in his planning, which he terms 'agro-industrial'. The full use of science and technology will be made.<sup>4</sup>

Like Gandhi and Roy, Jayaprakash also believes in the urgent necessity to bring morality back into politics. 'The problem of democracy', he says, 'is basically, and above all, a moral problem.'<sup>5</sup> But Jayaprakash emphasises more the sociological aspect of re-creating the human community rather than its political aspect. 'The problem of present day civilization is social integration. Man is alone and bored, he is "organization man", he is man ordered about and manipulated by forces beyond his ken and control - irrespective of whether it is "democracy" or dictatorship. The problem is to put man in touch with man, so that they may live together in meaningful,

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1. Narayan, A Plea for Reconstruction of Indian Polity, p.58.

2. Ibid., p.91.

3. Ibid., p.77.

4. Ibid., p.55.

5. Ibid., p.3.

understandable, controlled relationships. In short, the problem is to re-create the human community.<sup>1</sup> The achievement of this ideal society, he recognises, would be 'a colossal task' and would require the services of dedicated workers over a number of years to accomplish it - a task of 'moral regeneration' and 'social engineering', and not a political function of the state.<sup>2</sup>

Jayaprakash's political system is not by any means original. C.R. Das and Bhagwan Das pleaded for this pattern in their Outline Scheme of Swaraj, published in 1923. One authority finds in his ideas a close resemblance to those of Salvador de Madariaga, the Spanish political philosopher, expressed in his De L'angoisse à La Liberté, published in 1953, and subsequently published in English under the title Democracy Versus Liberty in 1958.<sup>3</sup> But in developing his ideas, in the words of Professor Morris-Jones, Jayaprakash 'represents a real and Indian point of view.'<sup>4</sup> The stress on political decision-making by unanimity and consensus rather than by debate and division, eschewing the pursuit of power, focus of political life to be shifted from the national parliament to the village, the village community as the principal organ of government, the inner transformation of man and society, not merely a change in institutional arrangements, are some of the ideas which are rooted in the Indian soil. Jayaprakash's thinking has been dismissed as visionary and utopian. With India increasingly committed to heavy industrialisation, planning and centralisation, it would indeed be a gigantic task to dismantle the present centralised structure and to build afresh grass-roots democratic institutions based on the democratic tradition of the so-called ancient republics. His goal of partyless democracy may arouse

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1. Narayan, A Plea for Reconstruction of Indian Polity, p.49.

2. Ibid., pp.4,107.

3. Tinker, op. cit., p.194 f.n.

4. W.H. Morris-Jones, The Government and Politics of India, p.216.

interest in the academic world, but in the realm of practical politics the ideal is difficult to realise, as he and his band of dedicated workers will have to resort to authoritarian methods to do away with the party system.

All these Indian political thinkers (excepting, of course, Subhas Chandra Bose) advocate decentralisation of political power and authority, a society in which there are no political parties and where change will be brought about by activity in villages and factories without governmental intervention. These anti-power feelings are in large part the product of certain Indian values, such as the gospel of renunciation, sacrifice, and detachment from this world.<sup>1</sup> Gandhi, Roy and Jayaprakash place emphasis on the participation of the people in the decision-making process of government: not democracy at the top but democracy to be fashioned from below and to be broad-based and pyramid-like. Roy (an atheist and a Westernised man rather than basically Indian) stresses the political aspect, whereas Gandhi and Jayaprakash stress the sociological aspect and may be regarded as basically Indian. Jayaprakash's political philosophy is based on the notions of people, nation and community rather than the individual. Gandhi, Roy and Jayaprakash have visualised a world community which makes the entire humanity one single nation, irrespective of colour, creed or religion.

The Muslim political thinkers reject wholesale the concept of 'majority rule' which in the Indian context mean the tyranny of the Hindu majority. Until 1940, the Muslim thinkers thought in terms of safeguarding Muslim interests within the framework of a united India. Ultimately, they formulated the demand for a separate nation-state. Abul Ala Maududi thought differently: he opposed the creation

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1. M. Weiner, "Struggle against Power: Notes on Indian Political Behaviour", World Politics, April 1956, p.395.

of a nation-state on the ground that Islam and nationalism were incompatible with each other. His solution was the establishment of an Islamic state, comprehending all the lands inhabited by the faithful. But with the creation of Pakistan he came to modify his views and left India for the new state, Pakistan, where he believed that the Islamic ideology could be realised within the body-politic of Pakistan.

## CHAPTER V

## CONSTITUTION-MAKING IN INDIA

The Indian Constituent Assembly as originally conceived was not a statutory body; its composition and functions being defined in a statement of 16 May 1946, by the British Cabinet Mission. The Assembly was to consist of 389 members, representing both British India and the Princely States, on the scale, roughly, of one member per million of population and it was to frame a constitution for a Union of India, embracing all the provinces and states, but, at the Union level, dealing only with foreign affairs, defence, and communications. The elections to the Assembly were held in July 1946 by indirect election. Members were elected by communal groups in the provincial assemblies on a system of proportional representation, under the terms of the 1935 Act which conferred the franchise on approximately 11 per cent of the total population. In a House consisting of 296 members representing the provinces, the Congress had the strength of 206 (202 General, 3 Muslims, 1 Sikh), Muslim League - 74 (Muslims), Independent - 8 (7 General, 1 Muslim), Unionist Party - 3 (2 General, 1 Muslim), Akali Party - 3 (Sikhs), Communist - 1 (General), Scheduled Castes Federation - 1. The Congress could count upon the support of 212 members, while in addition 6 members were likely to follow the Congress.<sup>1</sup> Thus the Assembly was dominated by the Congress. On this basis the Assembly held its first sitting on 9 December 1946. The Muslim

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1. A.C. Banerjee, The Constituent Assembly of India, pp.xxix, 46-7, 350.

League members refused to attend the sessions as they were not satisfied with the Congress interpretation of the 'grouping' provision of the Cabinet Mission plan. From the very beginning various difficulties arose which ultimately led to the passing by the British Parliament of the Indian Independence Act. This Act, which came into force on 15 August 1947, changed the entire basis of the Assembly's work. It partitioned India into two independent Dominions - India and Pakistan - and made a corresponding division of the Constituent Assembly, the members representing the Pakistan areas being formed into a separate Constituent Assembly for the Dominion of Pakistan while remaining members formed the Constituent Assembly for the Dominion of India. Each of the Assemblies was, in effect, given power to frame such a constitution as it thought fit for its own territory. Each thus became a statutory body invested with plenary powers by an Act of British Parliament which necessarily superseded the Cabinet Mission's statement of May 1946. The Act also provided for adaptation of the Government of India Act, 1935, by way of providing a provisional constitution for each Dominion pending the completion of the work of its Constituent Assembly.<sup>1</sup> We are here concerned with the work of the Constituent Assembly of India. In constitution-making, as in so many other matters, India was more fortunate than Pakistan because she inherited much of the former central government and did not have to establish de novo either a national capital or a national government.<sup>2</sup> Nevertheless, the leaders of the new Indian state were confronted with some basic problems in connection with constitution-making.

The most important problems may be listed as follows:  
 What would be the nature of the new Indian state? How far would it incorporate some of the ideas and institutions of ancient India,

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1. B.N. Rau, "The Indian Constitution", India Quarterly, October-December 1949, p. 291.
  2. H. Furber, "Constitution-Making in India", Far Eastern Survey, April 20, 1949, p.86.

and to what extent would it be modelled on the British and Western principles of democracy? How far would it embody Gandhian ideas? What type of government would be created? Would it be a presidential type of government as prevalent in the U.S.A. or the parliamentary system based on the British model or the Swiss composite executive? What would be the position of religious minorities? What would be the nature of the Indian federation? Would it have a strong centre or a weak centre? Should India have one or more languages as the official language?

The first task faced by the framers of the constitution was with regard to the type of government to be created. When the Constituent Assembly first met on 9 December 1946, the provisional Chairman, Dr. Sachchidananda Sinha, invited the attention of the members to some aspects of the question of constitution-making in Europe (especially Switzerland and France) and America. Explaining the significance of the Constituent Assembly, he said: 'This political method of devising a constitution for a country has not been known to .... Britain, for the simple reason, that under the British Constitution, there is no such thing as a constituent law, it being a cherished privilege of the British Parliament, as the sole sovereign authority, to make and unmake all laws, including the constitutional law of the country. As such, we have to look to countries other than Britain to be able to form a correct estimate of the position of the Constituent Assembly. He went on, '... the present constitutional system of Switzerland has several notable and instructive features... and I have no doubt that this great Assembly will study carefully the Swiss Constitution, and try to utilize it to the best advantage in the interest of preparing a suitable constitution for a free and independent India ... [and] pay in the course of your work

greater attention to the provisions of the American Constitution than to those of any other.<sup>1</sup> Moving the Objectives Resolution in December 1946, Nehru emphatically declared that new India would be a democracy but he at the same time pointed out that India was 'not going just to copy ... a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them.'<sup>2</sup> In the Objectives Resolution there was no mention of the panchayat. In the debate on the resolution, virtually no single voice was heard as regard this omission of the panchayat system of government. Members mentioned about democracy and socialism, but not of the necessity for indigenous institutions. Some people were surprised by the omission of any reference to socialism. Nehru himself seemed embarrassed by this omission, but he wanted this Resolution not to be controversial in regard to such matters. Perhaps Patel was opposed to its inclusion. Others viewed it as an indication of the extent to which Nehru was prepared to compromise as an inducement to the League. Both pressures were probably at work. Congress unity was essential in this period of crisis, and there was still hope of reconciliation with the League.<sup>3</sup> Further debate on the Objectives Resolution was postponed until mid-January 1947 in an effort to placate the League. When the Constituent Assembly reconvened on 20 January it was clear that the League did not intend to lift the boycott. Hence the Assembly proceeded to pass the Objectives Resolution unanimously (passed on 22 January 1947).

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1. CAID, vol. i, pp.3-4.

2. Ibid., p.60

3. M. Brecher, Nehru; A Political Biography, p.330.



The Report of the Provincial Constitution Committee envisaged the cabinet system of government. 'A Gandhian constitution seems not to have been given a moments thought.'<sup>1</sup> Introducing the report in the Assembly in July 1947, Sardar Vallabhbhai Patel, stated: 'Both these Committees [the Union Constitution Committee and the Provincial Constitution Committee - appointed in April 1947] met and they came to the conclusion that it would suit the conditions of this country better to adopt the parliamentary system of constitution with which we are familiar ... The Provincial Constitution Committee has accordingly suggested that this constitution shall be a parliamentary type of Cabinet.'<sup>2</sup> The report also provided for an elected Governor on the basis of adult suffrage. In the course of the debate, the Muslim League members spoke against the introduction of the cabinet system of government. They were all unanimous in their opinion that the British system of democracy would not suit India. They advocated a fixed-term executive on the Swiss model, elected by the legislature on a system of proportional representation. 'It would be a dangerous experiment', said A.A. Khan, 'to think of planting English system of democracy, where party affiliations are based exclusively on political principles.' It was absurd to think that in India the religious groups would disappear and parties would be formed on political and economic principles. In view of the existence of various religious groups and sectional interests in India, he suggested that an elected coalition government on the Swiss and Austrian pattern could enjoy the

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1. G. Austin, The Indian Constitution: Cornerstone of a Nation, p.34
  2. CAID, vol.iv, p.580.

confidence of every party in the cabinet. The introduction of the British system, in his view, had caused much strife in India.<sup>1</sup> Begum Aizaz Rasul did not want to repeat in India what was happening in France. In order to secure a strong and stable government it was necessary that the ministry 'should not be subject to the whims and fancies of the party or legislature to which it is responsible.' Only an irremovable executive elected by the legislature for a certain period could 'initiate long-range policies.'<sup>2</sup> The parliamentary system was not a democratic system, said another member. 'The model that ought to be before us is the model of the Swiss Government'.<sup>3</sup> The previous experience in local bodies led Khaliquzzaman to conclude that it would be better to have an irremovable executive. 'Otherwise, with the change of slogans there may be a change of Ministry'. Therefore, a provision should be included in the constitution to safeguard the ministers 'against these shifting parties and predilections of the groups in the legislatures.'<sup>4</sup> The framers of the constitution replied that the Muslim proposals would lead to the fragmentation of political life and result in disunited and coalition ministeries of the French type. K.M. Munshi stated: 'The mechanism of responsible government which we have ... been following to a large extent in this country is the British model, and a departure of this kind will weaken the ministry to a large extent and the provincial legislature will be nothing else but a fragmented house ....'<sup>5</sup> N.V. Gadgil argued that the Swiss system instead of securing a strong and

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1. CAID, vol. iv, p.633.

2. Ibid., pp.635-6.

3. Ibid., p.643.

4. Ibid., p.650.

5. Ibid., p.652.

stable government would result in a weak government. 'In the absence of collective responsibility there will neither be continuity nor consistency in administration.' The parliamentary system presupposed that there must be at least two major parties and the Leader of the House must have the confidence of that party which is in the majority in the House.'<sup>1</sup> Seth Govind Das explained that the system of responsible government prevalent in other countries indicated that 'responsible government cannot function unless there is joint responsibility. And there cannot be joint responsibility until and unless the Premier chooses his colleagues.'<sup>2</sup> The British system of parliamentary democracy could not be held responsible for the conditions prevailing in India because the system had not yet been put in operation in India.<sup>3</sup> Dr. Sitaramayya called for 'a new angle of vision'. With the adoption of joint electorates, he hoped, the political parties would be organised on a new basis. Government would represent all the religious communities - Muslims, Christians and Parsees.<sup>4</sup>

The Muslim members put forward the earlier argument when the Report of the Union Constitution Committee was presented on 21 July, 1947. K.S. Karimuddin pointed out that the communal tension and disruptive forces in India would justify an irremovable executive independent of the votes of the legislature.<sup>5</sup> Mahboob Ali Beg observed that the parliamentary democracy obtaining in England was not really democratic. 'In the first place, parliament does not choose the ministers; in the second place, the electorate cannot turn them out.'<sup>6</sup>

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1. CAID, vol. 49, p. 640.

2. Ibid., p. 637.

3. Ibid.

4. Ibid., p. 647.

5. Ibid., pp. 909-10.

6. Ibid., p. 919

At some of the earlier sessions of the Constituent Assembly, when the main principles of the new constitution were being laid down, there was a substantial body of opinion in favour of the American presidential system and this found expression in certain decisions of the Assembly, not only as to the mode of election of the head of the federation and of the heads of the constituent states, but also, to some extent, as to the relations between the heads of the states and their ministers.<sup>1</sup> During the debate on the Union Constitution Committee, some members proposed that the President should be elected by adult franchise, that the word 'Rashtrapati' should be substituted by the word 'Neta' or 'Karandhar' and that the President should be elected alternately from ~~the~~ North and South India.<sup>2</sup> Nehru said: '... We want to emphasize the ministerial character of the Government, that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity.' On the question of electing the President by adult suffrage, Nehru observed that the adoption of the American system would 'prevent the development of any ministerial form of Government and we shall waste tremendous amount of time and energy.'<sup>3</sup>

While there was a general agreement that there should be a parliamentary system of government, the drafting of the constitution was handed to a Drafting Committee (formed 29 August 1947) under the chairmanship of Dr. Ambedkar. The committee

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1. B.N. Rau, "The Indian Constitution", India Quarterly, October-December, 1949, p.299; India's Constitution in the Making, p.316.
  2. CAID, vol.iv, pp.818-846.
  3. Ibid., p.734.

worked on the original draft prepared by B.N. Rau, the Constitutional Adviser. Rau brought to bear on his task a detailed knowledge of constitutions of other countries and an extensive knowledge of the conditions of India as well as his own administrative experience. The draft of India's Constitution was released to the public on 26 February 1948. The draft consisted primarily of the committee's borrowed and modified provisions of the British and American Constitutions and the Government of India Act, 1935. The word panchayat did not once appear in the draft. Even the minutes of meetings of the committee shows that the committee members showed no interest in a Gandhian constitution.<sup>1</sup> Introducing the draft constitution in the Assembly in November 1948, Dr. Ambedkar explained the reasons why the framers of the Indian Constitution had discarded the American model after providing for the election of the President by an electoral college formed by members of the State legislatures and the Union parliament. 'In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. But beyond identity of names there is nothing in common between the form of government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system .... The President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. His place in the administration is that of a ceremonial device. The President of the United States is not bound to accept any

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1. Austin, op. cit., p.34 -f.n.

advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers ... The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so, so long as his Ministers command a majority in Parliament ... The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India.<sup>1</sup> He emphasised that a democratic executive must satisfy two conditions: first, it must be a stable executive and, second, it must be a responsible executive. It was not possible to devise a system which could ensure both in equal degree. The draft constitution in recommending the parliamentary system of executive, had preferred more responsibility to more stability.<sup>2</sup> Dr. Ambedkar rejected the proposals for 'village republics' with contempt. He declared: 'The love of the intellectual Indians for the village community is of course infinite if not pathetic...I hold that these village republics have been the ruination of India... What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.'<sup>3</sup> This omission of the village panchayat system in the draft constitution produced reaction among the Assembly members who submitted amendments to the draft advocating the establishment of panchayats. Many members had doubts about the suitability of adult franchise

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1. CAID, vol.vii, pp.32-3.

2. Ibid.

3. Ibid., p.39.

in India due to illiteracy. The alternative to adult suffrage was some kind of indirect election based upon village communities and constituting them into electoral colleges. Dr. Rajendra Prasad, the President of the Constituent Assembly, suggested the principle of adult suffrage at the village panchayat level and a system of indirect election for both the central and provincial legislatures. The question was referred to B.N. Rau for his advice. Rau explained the difficulties involved in such a plan at the present stage and pointed out that the present world trend was strongly towards direct election.<sup>1</sup> M.A. Ayyangar said in the Assembly: 'Left to myself, I would have preferred that the village ought to have been made the unit, and panchayats must have been formed on adult suffrage with local councils etc., and elections must have been indirect. But we have chosen, in keeping with the times, adult suffrage for this country.'<sup>2</sup> The introduction of adult suffrage was, indeed, a departure from the past, 'thus raising the electorate at a stroke from thirty to a hundred and seventy-five millions.'<sup>3</sup> But under increasing pressure from the Gandhian section of the Congress Party the Assembly leaders agreed that an article concerning panchayats should appear in the Directive Principles. The Assembly adopted an official amendment moved by K. Santhanam on November 22, 1948,<sup>4</sup> and thus Article 40 came into the constitution which reads: 'The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary

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1. B.N. Rau, India's Constitution in the Making, p.331.

2. CAID, vol.xi, p.663.

3. P. Spear, India, Pakistan and the West, p.215.

4. See CAID, vol.vii, pp.520,527.

to enable them to function as units of self-government.'

The draft constitution envisaged an elected Governor. But some members of the committee were strongly in favour of appointment by the President because they felt that the co-existence of a Governor elected by the people and a Chief Minister responsible to the legislature might lead to friction and consequent weakness in administration.<sup>1</sup> It was decided in the Assembly that the Governors should be nominated by the central government. In the words of Nehru, 'We should always view things from the context of preserving the unity, the stability and the security of India' and should 'not take any step which might tend towards loosening the fabric of India.' The nominated Governors, it was hoped, would reduce the dangers of provincialism and communalism and it would avoid wasteful spending of time, energy and money which another election would entail.<sup>2</sup> While others like Professor S.L. Saksena held the view that the Governor should not be a mere figurehead and his dignity and prestige could only be enhanced if he was elected by the people.<sup>3</sup>

The Muslim members of the Assembly opposed the adoption of the parliamentary system, arguing that it proved a failure before independence. K.S. Karimuddin emphasised that suppression of political opposition and the absence of properly working conventions and discipline were a danger to stability, which could be better ensured by the introduction of the presidential form of government together with strict separation of powers and with an executive fairly independent of legislature.<sup>4</sup> Mahboob Ali Beg stated: 'It is common knowledge -

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1. Draft Constitution of India, pp.vii, 57 f.n.

2. CAID, vol.viii, pp.455-6.

3. Ibid., p.450.

4. CAID, vol.vii, pp.964-5.



and from experience also we have found - that the responsible executive under which we have been working for the last two decades has pointedly brought to our attention the fact that a removable parliamentary executive is at the mercy of hostile groups in their own party .... It is so unstable ... always in fear of being turned out by no-confidence motions. The ministers have always been very careful to satisfy the various elements in their party in all their legitimate and illegitimate demands.<sup>1</sup> This school of political thought advocated therefore a President elected directly by the people and not by an electoral college, a cabinet responsible to the President and not to the legislature, and real executive power vested in the President. Not only the Muslim members, but some of the Hindu members also, became sceptical about the parliamentary system. They insisted on a strong presidential system of government. Ramnarayan Singh said: 'We do not want Governors and even Ministers ... I say emphatically that the constitution is not what is wanted by the country... This parliamentary system of government must go... Both in the Centre and in the provinces we must have all-powerful Presidents ... who will choose their ministers or secretaries... It is better to be ruled by devils than by an army of ministers and secretaries, etc.'<sup>2</sup> He desired that the party system ought to be abolished. 'The party system is fatal to democracy.'<sup>3</sup> Brajeshwar Prasad was perhaps the most vigorous exponent of the presidential system. He wanted all provincial and state governments abolished and all executive, legislative, judicial and financial powers

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1. CAID, vol.vii, p.295.

2. Ibid., p.249.

3. CAID, vol.iv, p.357

vested in a President, assisted by four advisers. Like Plato, he advocated the rule by a philosopher-king which he considered to be 'the best system of government' appropriate to India. He referred to the traditions and achievements of ancient Indian rulers, the Khalifas of Islam and the modern dictators, like Hitler, Mussolini, Kemal Ataturk and Stalin, as 'worthy of emulation.'<sup>1</sup> Like Hobbes, he said that 'the will of man is nasty, brutish and short.'<sup>2</sup> 'The representation of the real will of the people, as distinct from actual will, is the core of democracy... The rule of the dictator is essentially democratic, if he stands for the greatest good of greatest number.'<sup>3</sup> that the Assembly should adopt a special provision number.'<sup>3</sup> Professor K.T. Shah, proposing a motion/embodying the doctrine of separation of powers, stated that the British system was evolved in conformity with the genius of the British people, not so much by a written constitution, as by evolving constitutional conventions, supported by centuries of usage. If the judiciary was not completely separated from the executive and legislative organs then the undue influence might be exercised over the judges by both the organs. He cited the example of America where the separation between the executive and the legislature had worked quite satisfactorily for over a hundred and fifty years. The American founding fathers had before them the model of the English Constitution but they had decided to devise a constitution which kept completely apart the legislature, the executive and the judiciary.<sup>4</sup>

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1. CAID, vol.vii, pp.372-3.
  2. CAID, vol.xi, p.877.
  3. CAID, vol.vii, p.373.
  4. Ibid., pp.959-60, 962.

At an earlier stage, the Union Constitution Committee decided (with one or two dissident voices) that the central government should be based on the British model and that the American model was to be rejected for two valid reasons. The two issues that came before the House and the several committees were these: what would make for the strongest executive consistently with a democratic constitutional structure and the second issue was, which was the form of executive best suited to the Indian situation.<sup>1</sup> The Assembly had already discussed the question and had taken a decision in favour of parliamentary government and on the basis of that decision, the entire constitution was drafted by the Drafting Committee.

In reply, Dr. Ambedkar pointed out to the critics of the parliamentary system that many Americans were themselves quite dissatisfied with the rigid separation of powers. In view of the complications and phenomenal increase in the work of parliament, the members of the legislature were required to 'receive direct guidance and initiative from the members of the Executive, sitting in Parliament.'<sup>2</sup> K. Santhanam remarked that the complete separation of powers in the American Constitution was a 'myth'. Even there the executive and the legislature were found to be at loggerheads. India could not afford, he added, to waste time in such conflicts at its formative period of economic reconstruction.<sup>3</sup> 'An infant democracy', said A.K. Ayyar, 'cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive.'<sup>4</sup> K.M. Munshi

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1. See the speech of K.M. Munshi, CAID, vol.vii, p.984.

2. Ibid., p.968.

3. Ibid., pp.966-7.

4. Ibid., p.985.

asked.'... During the last several generations ... public men in India, have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become parliamentary... After this experience why should we go back upon the tradition that has been built for over 100 years, and try a novel experiment ... framed 150 years ago and which has been found wanting even in America?'<sup>1</sup> In reply to Professor K.T. Shah, K.M. Munshi advanced the reasons why the American system was not found acceptable. He said: 'It must not be forgotten that the American Constitution was made long ago in the 18th Century. The makers were then guided by Montesquieu's interpretation of the British Constitution that there was separation of powers in England. They thought that they were transplanting Montesquieu's analysis into a constitutional structure. The powers that were given to the President in the Constitution of America were based on what is now held on all accounts to be a misreading of the British Constitution in the 18th century.'<sup>2</sup>

So, these reasons influenced the Assembly as well as the various committees, in adopting the cabinet system of government in preference to the presidential type. The constitution has vested the executive power of the Union in the President and contains a number of provisions specifying his powers in detail. There shall be a council of ministers to aid and advise the President in the discharge of his functions but does not make the advice binding. According to C.H.

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1. CAID, vol. vii, pp.984-5.

2. Ibid., p.984.

Alexandrowicz, these provisions by themselves might defeat the purpose and operation of cabinet government which in fact prevails in India. Thus it must be assumed that in spite of an elaborate written constitution, important constitutional matters have been left to conventions which convert the President's position to that of nominal head of the executive. He further maintains that no clear-cut distinction between a real and nominal head of state can be drawn in India, and that future Presidents may find inspiration and legal backing in the provisions of the constitution to establish themselves in the position of real head of the executive, somewhat similar to those of South American Presidents.<sup>1</sup> Professor Alan Gledhill has postulated such a President, who could successfully conceal his ambition to establish an authoritarian system of government without violating the constitution.<sup>2</sup> 'It is conceivable, however,' comments another writer, 'that an Indian De Gaulle might some day make use of the emergency powers entrusted to the President under the Constitution to make Parliament subservient to the Executive,'<sup>3</sup> although it was in part due to the feared misuse of executive power that the Assembly adopted cabinet government instead of the fixed executive.<sup>4</sup> The working of the constitution during the period 1950-56 clearly indicated, however, that the President was, in practice, only the ceremonial head of state. Fortunately for India there was during this period a stable government at the centre, one that always enjoyed the confidence of parliament. It cannot be assumed that such a happy position will necessarily

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1. C.H. Alexandrowicz, Constitutional Developments in India, pp.1,
  2. A.<sup>127</sup> Gledhill, The Republic of India, p.121.
  3. V.M. Dean, New Patterns of Democracy in India, p.85.
  4. Austin, op.cit., p.127.

last forever. In 1951, President Rajendra Prasad threatened to use his power of veto unless the Hindu Code Bill (which was introduced in parliament by Nehru) was withdrawn. Consequently the bill was long delayed.<sup>1</sup>

Gandhian sections of the Congress Party deplored the whole constitution as a betrayal of Gandhian ideals. From outside the Assembly, the Education Minister of Uttar Pradesh, Sampurnanand, declared: '... Our Constitution is a miserable failure. The spirit of Indian culture has not breathed on it; the Gandhism by which we swear so vehemently at home and abroad, does not inspire it. It is just a piece of legislation like, say, the Motor Vehicles Act.'<sup>2</sup> Within the Assembly, one member regarded it as 'a slavish imitation of - nay, much more, - a slavish surrender to the West.'<sup>3</sup> Shankarrao Deo said: 'It was a political revolution ... which we have tried to embody in this Constitution. But as far as social or economic conceptions of Mahatma Gandhi's ideology of life are concerned we must admit that we have to travel far before we can say that we are anything near to them ... The Constitution naturally reflects the status quo.'<sup>4</sup> Lakshminarayan Sahu emphasised that 'in framing the constitution we have deviated from the [Indian] ideals ... The ideals on which the Draft Constitution is framed have no manifest relation to the fundamental spirit of India... After all what is there in the Constitution to be proud of?'<sup>5</sup> Damodar Swarup Seth found no 'mention of villages' in the constitution. He suggested that the constitution of India should be based on 'local self-government' and should be 'a Union of small autonomous republics.'<sup>6</sup> He went on: 'This

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1. H. Tinker, India and Pakistan, p.121.

2. Address to University Convocation, Agra, November 19, 1949; quoted by Jaspat Roy Kapoor, CAID, vol.xi, p.760.

3. CAID, vol.vii, p.242; Lokanath Misra.

4. CAID, vol.xi, pp.730-2.

5. Ibid., pp.613-4.

6. CAID, vol.vii, p.212.

Constitution as a whole, instead of being evolved from our life and reared from the bottom upwards is being imported from outside and built from above downwards.<sup>1</sup> This was quite contrary to what Gandhi stood for. 'Mathatma Gandhi advocated decentralisation through<sup>out</sup> his life. It is surprising that we have forgotten that lesson so soon after his departure, and are now giving undue powers to the President and the Central Government.'<sup>2</sup> K. Hanumanthaiya stressed the same point: 'The first and foremost advice which he [Gandhi] gave ... was that the constitutional structure of this country ought to be broad-based and pyramid-like. It should be built from the bottom and should taper right up to the top. What has been done is just the reverse.'<sup>3</sup> 'Our country and our society', said Ramnarayan Singh, 'does not need a government ... We need in our country Sēvak Mandals, Societies of Servants and not a government.'<sup>4</sup> Professor N.G. Ranga urged the need for decentralisation as centralisation might lead to a totalitarian state. 'We as Congressmen are committed to decentralisation ... If we want on the other hand centralisation ... that would only lead to Sovietisation and totalitarianism and not democracy.'<sup>5</sup> He looked forward to the day when it would be possible for India 'to achieve a co-operative Commonwealth; as Bapu was good enough to call it through the Kisan-Mazdoor@buddhijeebi-Kalakar raj', Mahavir Tyagi characterised Western democracy as 'a hoax and a fiction.' He deplored that he could 'see nothing Gandhian in this Constitution.'<sup>7</sup> While others like T. Prakasam considered the

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1. CAID, vol.vii, p.212.
  2. CAID, vol.xi, p.696.
  3. Ibid., p.616-7.
  4. Ibid., p.640.
  5. CAID, vol.vii, p.350.
  6. CAID, vol.xi, p.630.
  7. CAID, vol.vii, pp.360, 1223.

establishment of village republics as the only possible way to contain Communism.<sup>1</sup> H.V. Kamath desired that India's political institutions should reflect her own political and historic past. As the specific answer to centralisation he, like other speakers, urged the need for panchayat raj. He added: 'A time will arrive when India is stabilized and strong, and I hope we will then go back to the old plan of the Panchayat Raj or decentralised democracy, with village units self-sufficient in food, clothing and shelter and interdependent as regards other matters. I hope we will later go back to that Panchayat Raj. Sir, to my mind the only system that will save India and the world and is what I may call spiritual communism...'<sup>2</sup>

The Assembly's alternative to a Gandhian constitution was a constitution based on the British model. The Assembly's decision to give India a parliamentary constitution took two and a half years from the first meeting of the Congress Experts Committee on the Constituent Assembly, held in July 1946, to the debate on the draft constitution in November 1948 - when panchayats were relegated to the Directive Principles and indirect election was buried away. G. Austin in his recent book, The Indian Constitution: Cornerstone of a Nation (p.32) argues that the length of time spent in arriving at this decision did not mean that there was a genuine contest between the two major alternatives. Although most Assembly members favoured the development of village life, including greatly increased responsibility for village panchayats, few Assembly members could finally bring themselves to support a full-fledged system of indirect, decentralised government. He concludes that India would have a centralised

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1. CAID, vol.vii, p.522.
  2. CAID, vol.xi, p.690.



parliamentary government was nearly certain from the start, and increasingly during the lifetime of the Assembly the compulsion of events made that choice even more certain. The decision to create a state on the principles of parliamentary democracy, in the words of K.M. Panikkar, 'lie in the traditional conservatism of the [Indian] middle classes who were unwilling to try new experiments.'<sup>1</sup> Nevertheless, some of the Gandhian ideas were incorporated in the Directive Principles. Article 40 enjoins the state 'to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.' Most State governments had enacted legislation to implement this provision, giving legal status to panchayats, and parliament had passed a series of Acts designed to promote the panchayat system. But till 1956 most of the panchayats were not working satisfactorily. The Balvantray Mehta team in their report of 1957 stated that 'the available information indicates that possibly not more than 10 per cent of the total number of panchayats are functioning effectively', because 'the number of panchayats which are torn by factions or in which squabbles are rampant is large. In fact in some States they are in a majority ... Panchayat elections have resulted in creating or aggravating factional rivalries in about one-third of the villages in which there was a contest.'<sup>2</sup> Professor Tinker has come to the conclusion that 'in general, the panchayat experiment has shown the same discouraging refusal to "get off the ground" as before independence.'<sup>3</sup> Article 43 asks the state 'to promote cottage industries ... in rural ares.' Since 1950 the cottage industries have not received encouraging support from

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1. K.M. Panikkar, The Foundations of New India, p.171.
  2. Quoted in Norman D. Palmer, The Indian Political System, p.153; H. Tinker, India and Pakistan, p.191.
  3. H. Tinker, "Authority and Community in Village India", Pacific Affairs, December 1959, p.361.

the Union and State Governments in view of the vast programme of industrialisation undertaken under the auspices of the Planning Commission. Article 47 directs the state to 'endeavour to bring about prohibition' of intoxicating drinks and drugs. In four States, Andhra, Bombay, Madras and Saurashtra, this provision has been implemented and in nine States there is partial prohibition.<sup>1</sup> Article 48 enjoins the state to take steps for 'prohibiting the slaughter of cows' and in four States, Uttar Pradesh, Madhya Pradesh, Rajasthan and Bihar, slaughter has been forbidden by legislation.

From this analysis it appears that Austin overstates the parliamentary character of the constitution.

The next important task which confronted the framers of the Indian Constitution was the question of communal minorities. The principal minority communities which were involved in the constitutional debates on safeguards were the Muslims, the Scheduled Castes, the Sikhs, the Indian Christians, the Anglo-Indians, and the Parsees. In the decades before independence, the British held the minorities problem to be the main stumbling block to a constitutional settlement in India. To the Muslim League it was their raison d'être, whereas to the Congress, it was an issue which was entirely a British creation, which would be satisfactorily solved as soon as India achieved freedom. Therefore, the Congress all along ignored the communal problem and repudiated all forms of separate representation for the minorities. The British attempted to solve this problem by gradually incorporating a series of safeguards in the constitutional system, which included separate electorates,

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1. Assam, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh, Madhya Bhat, Mysore, Travancore-Cochin, Himachal Pradesh. This account is of 1954-55 period before the States reorganisation. See Report of the Prohibition Enquiry Committee, 1954-55, p.17.

weightage, reservation of posts in the public services, and the convention of minority representation in the provincial cabinets.<sup>1</sup> The Muslim demand for Pakistan having been conceded, it became easier for the Indian constitution-makers to overcome this problem of minority safeguards with the need to mollify the Muslims removed. Still, India had numerous minorities within her borders including a substantial section of the Muslim community. The dilemma which the framers of the Indian Constitution was confronted with may be expressed in the words of Sir Ivor Jennings: 'To compromise with communal claims may be the height of statesmanship because it enables the majority to secure the support of the minorities. To recognise communal claims, on the other hand, is to strengthen communalism. The Constituent Assembly has decided to ignore communalism.'<sup>2</sup>

While the main principles of the constitution were being worked out by the Union and Provincial Constitution Committees and the Union Powers Committee, the task relating to minority rights and safeguards was handed over to an Advisory Committee. The Report of the Advisory Committee on the subject of Minority Rights was introduced in the Assembly in August 1947. The committee 'by an overwhelming majority' proposed that the system of separate electorates be abolished. It recommended that all elections to the central and provincial legislatures should be held on the basis of joint electorates with reservation of seats for the different recognised minorities, Muslims, Scheduled Castes and Indian Christians, the latter only so far as the central and the provincial legislatures of Madras and

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1. Ralph H. Retzlaff, "The Problem of Communal Minorities in the Drafting of the Indian Constitution", M.R.N. Spann (ed.), Constitutionalism in Asia, pp.56-7.
  2. Sir. I. Jennings, Some Characteristics of the Indian Constitution, p.65.

Bombay were concerned, on a population basis, initially for a period of 10 years, with the right to contest general seats as well. The report was opposed to weightage for any minority community. The question of separate electorates was of 'crucial importance' not only to the minorities but to the political life of India as a whole. 'This system', it was recognised, 'has in the past sharpened communal differences to a dangerous extent and has proved one of the main stumbling blocks to the development of a healthy national life.'<sup>1</sup> The proposals that were made by some members of the committee that there should be a constitutional provision for the representation of minorities in cabinets and the statutory guarantee of representation in the public services were considered by the committee as 'a dangerous innovation.' But it was agreed that there should be a general exhortation in the constitution or in the schedule asking the central and provincial governments 'to keep in view the claims of all the minorities in making appointments to public services consistently with the efficiency of administration.'<sup>2</sup> The Advisory Committee's report claimed that the recommendations, 'where they were not unanimous, were taken by very large majorities composed substantially of members belonging to minority communities themselves.'<sup>3</sup> The Muslim representative from South India, B. Pocker, proposed an amendment which was also supported by Khaliquzzaman, the leader of the Muslim League Party in the Assembly, for introducing

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1. Constituent Assembly, Reports of Committees (Second Series), 1948, p.30.
  2. Ibid., p.33.
  3. Ibid., p.30.

separate electorates. The representatives of the Scheduled Castes, the Anglo-Indians, the Indian Christians and the Parsees welcomed the report. The Scheduled Castes representatives wanted statutory reservation of posts in cabinets.<sup>1</sup> The report was accepted by the Assembly during August 1947, and had been embodied in Part XIV of the draft constitution. The proposals of the Advisory Committee were incomplete in so far as the East Punjab and West Bengal were concerned, because at that time 'the effect of partition was not felt or known.' At a later stage in December 1947 a sub-committee was appointed to consider this question. This committee made its report to the Advisory Committee in February 1948. The Sikh representatives wanted time to consider the report and consult their own community on the matter. Some of the Muslim representatives 'had changed their opinions.' 'They put forward the plea that all these reservations must disappear.'<sup>2</sup> By late 1948, some members of the Advisory Committee felt that, conditions having vastly changed since the committee made its recommendations in August 1947, it was no longer desirable in the new context that there should be reservation of seats for minorities. 'Although the abolition of separate electorates had removed much of the poison from the body politic', the reservation of seats for minorities, it was felt, would lead to 'separatism' and was 'contrary to the conception of a secular democratic state.'<sup>3</sup> Dr. H.C. Mookerjee, Tajamul Husain, L.K. Maitra and certain other members had given notices of resolutions to this effect. V.I. Muniswami Pillai, the Scheduled Castes representative, moved an amendment to these

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1. See CAID, vol. vi, nos.8 and 9.

2. CAID, vol.viii, p.270.

3. Constituent Assembly, Reports of Committees (Third Series), 1950, p.241.

resolutions seeking to safeguard the Scheduled Castes. Accordingly, the Advisory Committee in its meeting of May 1949, 'with one dissenting voice', passed the resolution as amended by Pillai: 'That the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.' The reservation of seats was also extended to certain classes of Sikhs in East Punjab who were included in the list of Scheduled Castes.<sup>1</sup> When the report was debated in the Assembly in May 1949, the Muslim League members from South India, such as B. Pocker and Mohamed Ismail, with Muhammad Saadullah of Assam, insisted on separate electorates and reservation of seats. Pocker said, 'When this reservation goes, the only chance of the minorities having their representation in the legislature also goes.'<sup>2</sup> Mohamed Ismail charged that the Muslim members who had agreed to the abolition of reservation had no 'representative character.'<sup>3</sup> Saadullah revealed that out of 4 Muslim representatives present at the meeting of the Advisory Committee only one supported the resolution in favour of abolition of reservation of seats, there was one opponent and the other two (including Maulana Azad) remained neutral.<sup>4</sup> As Ralph H. Retzlaff observes: 'The effect of the fragmentation within the Muslim and Sikh communities played a decisive role in enabling the committee to adopt the resolution calling for the abolition of reservation.'<sup>5</sup>

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1. Constituent Assembly, Reports of Committees (Third Series), 1950, p.241.
  2. CAID, vol.viii, p.274.
  3. Ibid., p.277.
  4. Ibid., p.304.
  5. Ralph H. Retzlaff, op.cit., p.71.

The Muslim representatives from West Bengal, Bihar and U.P. agreed to the proposals embodied in the report and placed their trust in the good will of the majority community, hoping that the political parties in the future would not ignore the minorities, especially Muslims. Thus, Naziruddin Ahmad opposed reservation of seats: 'Reservation would be really harmful to the Muslims themselves' and 'to the entire body politic.' He strongly advocated that 'religion should have nothing to do with politics... Religion is a private matter ... Whether in this Assembly or in public life outside, we are neither Hindus nor Muslims.'<sup>1</sup> Muhammad Ismail Khan believed that 'reservation of seats would only keep alive communalism.'<sup>2</sup> Begum Aizaz Rasul held that 'in a secular state separate electorates have no place.'<sup>3</sup> Tajamul Husain said that the parliamentary system was inconsistent with reservation of seats. He added: 'We desire neither reservation nor separate electorates. We want to merge in the nation.... We are Indians first and we are Indians last.'<sup>4</sup> Tajamul Husain denied<sup>5</sup> the allegation made by Saadullah. He demonstrated from his own statistics that the majority of the Muslim members of the Assembly were in favour of joint electorates. Out of the 23 Muslim members on the roll of the Constituent Assembly, 4 were in favour of separate electorates, 4 for reservation of seats, 1 for cumulative voting, 13 for joint electorates and 1 unknown.<sup>5</sup> Hasrat Mohani stated: 'If we are to establish a true democratic state, then there is no room for any religious or communal parties.'<sup>6</sup> Sardar Patel on the final day of the debate on minority rights made a bitter

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1. CAID, vol.viii, pp.296-7.

2. Ibid., p.323.

3. Ibid., p.300.

4. Ibid., p.333.

5. Ibid., p.337.

6. Ibid., p.341.

reply to those who insisted on separate electorates. 'There is no place here for those who claim separate representation.'<sup>1</sup>

He appealed to the minorities that 'in the changed conditions of this country it is in the interest of all to lay down real and genuine foundations of a secular State, then nothing is better for the minorities than to trust the good sense and sense of fairness of the majority, and to place confidence in them.'<sup>2</sup>

Earlier in the debate on the draft constitution some of the spokesmen of the minority communities advocated the system of proportional representation so that the minorities who would be elected could truly represent their community. K.S. Karimuddin feared that the representatives who would be elected under joint electorates with reservation of seats would not be the representatives of the minorities for whom the reservation was given and this would create permanent statutory minorities in the country. The proportional representation by single transferable vote, he believed, would protect the rights of the minorities - 'the only democratic system known in Europe for the protection of Political and Communal minorities.' He pleaded for the adoption of a non-parliamentary executive which could protect the interests of minorities as well,<sup>2s</sup> was not liable to be removed by their supporters.<sup>3</sup> Z.H. Lari referred to Ireland, Belgium and Switzerland where the system was working satisfactorily.<sup>4</sup> Hussain Imam stated that 'the danger of reducing India to a Fascist state' could only be avoided by

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1. CAID, vol.viii, p.350.
  2. Ibid., p.272.
  3. CAID, vol.vii, p.243.
  4. Ibid., p.299; vol.viii, pp.282-7.



adopting the system of proportional representation.<sup>1</sup> The adoption of proportional representation was also supported by the Sikh representative, Sardar Hukam Singh, and a Hindu member, Professor K.T. Shah. According to Sardar Hukam Singh, the communalism implicit in the system of separate electorates and reservation of seats could be avoided by proportional representation,<sup>2</sup> whereas Professor K.T. Shah advocated the system not so much to perpetuate communal minorities but to represent the various shades of political groups in the legislature.<sup>3</sup> Outside the Assembly, D.R. Gadgil made a plea for the system of proportional representation. The system of representation on the English model, he said, was not suitable for India. In his view, proportional representation 'would allow for a proper representation of the numerous types of minorities that exist in India - religious minorities, social minorities, linguistic minorities, political minorities, class or occupational minorities and others.'<sup>4</sup> But this solution did not commend itself to the Congress Party in the Constituent Assembly which obviously believed in strong party government. Nehru could 'think of nothing more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation.'<sup>5</sup> Election of ministers by proportional representation, said Sardar Patel, 'cuts at the very root of democracy' and 'contrary to the whole framework of this constitution.'<sup>6</sup> While Ambedkar replied that this complicated system would involve literacy on a large scale and would not be suited to the form of government which the

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1. CAID, vol.vii, p.303.

2. Ibid., p.1250.

3. Ibid., p.1238.

4. D.R. Gadgil, Some Observations on the Draft Constitution, p.92.

5. CAID, vol.iv, p.915.

6. Ibid., p.654.

constitution laid down. He argued that the 'proportional representation is really taking away by the back-door what has already been granted to the minorities.'<sup>1</sup> Thus the system of proportional representation involving multi-member constituencies was rejected and the system of majority voting based on single member constituencies was adopted for elections to the lower house of parliament and to provincial legislative assemblies. The principle of proportional representation was accepted in the matter of election to the upper house of parliament. Jennings commented: '... The effect of a system of single-member constituencies is invariably to give a preference to the prevailing majority ... In Asia there is grave danger that voting will be on communal lines and accordingly that communal minorities will be inadequately represented. Ceylon guarded against this problem in its Constitution, while India apparently believed it to be unimportant.'<sup>2</sup>

In the general elections held in 1952, under the electoral system in force, the success of the smaller parties was limited to certain regions only and none of them could be expected to achieve national status. Of the two main opposition parties, the Socialist Party contested seats on an all-India basis, whereas the Communist Party adopted a technique of regional concentration in contesting seats. The policy of the Socialist Party led to under-representation of the party in the Lok Sabha, while the Communist Party secured half the number of votes obtained by the Socialists but got twice as many seats. The Socialist approach would have been an 'appropriate method of

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1. CAID, vol.vii, p.1261-3.

2. Jennings, op. cit., p.29.

obtaining immediate results under the system of proportional representation which helps minority parties to secure adequate representation in multi-member constituencies all over the country.<sup>1</sup>

So far as the Muslims were concerned, in the 1952 elections, in terms of population the Muslims could have expected about 49 seats, but they secured only 28 out of 489 elected seats in the Lok Sabha.<sup>2</sup> In the State Assemblies (excluding Jammu and Kashmir) out of a total of 3283 seats, the Muslims secured only 171.<sup>3</sup> In the Rajya Sabha, Muslims secured more than proportionate representation winning 24 out of 200 seats, likewise in the States where upper houses exist, Muslims were generally better represented.<sup>4</sup> However, this inadequate political representation might be ascribed to other factors. First, the volume of Muslim participation in politics has been smaller in the post-partition years. Second, there has been 'the erosion of leadership at various levels and the inability of the Muslims, due to a variety of reasons, to adjust themselves to the growing modernization of and structural changes in Indian society.'<sup>5</sup>

When the Constituent Assembly met in December 1946, expectations were still fixed on a loosely federated united India on the American model because of the suspicion and fear of the Muslims of a strong Hindu-dominated centre. The terms of reference of the constitution-makers were defined in a Resolution on Aims and Objects, moved by Nehru, of which para 3 states: '... the said territories (British India and the Princely States)

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1. Alexandrowicz, op. cit., pp.209-10.

2. Sisir K. Gupta, "Moslems in Indian Politics", India Quarterly, October-December 1962, p.371.

3. Ibid., p.373.

4. Ibid., p.378.

5. Ibid., p.362.

... shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union....'<sup>1</sup> Even at this stage, Dr. Ambedkar called for 'a strong united Centre, much stronger than the Centre we had created under the Government of India Act of 1935.'<sup>2</sup> The severe limitation on the scope of central authority in the Cabinet Mission's plan was a compromise in order to accommodate the Muslim League. The partition was a settled fact by June 1947. The members of the Union Powers Committee (of which Nehru was Chairman) were unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. 'We have... come to the conclusion ... which was also reached by the Union Constitution Committee - that the soundest framework for our constitution is a federation, with a strong centre.'<sup>3</sup> The emphasis was shifted to the need for a strong centre symbolising national unity. This was revealed in the speech of K.M. Munshi: 'We ... feel free to form a federation of our own choice - a federation with a centre as strong as we can make it. ... We have now a homogeneous country....'<sup>4</sup> N.G. Ayyangar, introducing the Report of the Union Powers Committee, said: 'The Committee came to the conclusion that we should make the Centre in this country as strong as possible consistent with leaving a

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1. CAID, vol.i, p.57.

2. Ibid., p.99.

3. Constituent Assembly, Reports of Committees (First Series), 1947, p.66.

4. CAID, vol.iv, pp.544-5.

fairly wide range of subjects to the Provinces in which they would have the utmost freedom to order things as they liked.<sup>1</sup> The members of the Committee also thought that the residuary powers should remain with the centre.<sup>2</sup> During the Assembly debate on the report voices were raised against a strong centre. Professor Morris-Jones has written that the 1919 and the 1935 Acts 'introduced on to the stage the provincial politician' and had given him an opportunity to appreciate the scope and importance of government at the provincial level. 'It was unlikely that these men, when they came to form a significant proportion of the members of the Constituent Assembly in 1948-49, would allow much talk of a 'purely unitary constitution.'<sup>3</sup> K. Santhanam spoke bitterly and very vehemently about the powers that were proposed to be given to the centre. 'I do not want any constitution in which the Unit has to go to the Centre and say "I cannot educate my people; I cannot give sanitation; give me a dole for the improvement of roads, for industries, for primary education!"' The distribution of powers as adopted in the Union Powers Committee Report, he held, would result in a situation in which 'all the provinces would revolt against the centre' within three years.<sup>4</sup> Ram Narayan Singh desired that the primary units of government should be established in villages. The greatest measure of power should vest in village republics and then in the provinces and then in the centre. But he still wanted that the centre should be made strong but residuary powers must vest in the provinces.<sup>5</sup>

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1. CAID, vol.v, p.39.

2. Constituent Assembly, Reports of Committees (First Series), p.67.

3. W.H. Morris-Jones, Parliament in India, p.17.

4. CAID, vol.v, p.57.

5. Ibid., pp.92-3.

The circumstances prevailed preceding and accompanying partition necessitated that only a strong government could survive the communal troubles, accomplish the administrative tasks created by partition and the transfer of power, and resettle the refugees. Only with centralised co-ordination and control could the food crisis be solved and the economy of the country saved from disaster. Only a strong central government could deal with the problem of the Princely States, few of which had any semblance of representative government or effective administration or seemed inclined to co-operate with the new government. There was also the fear that provincial governments might not be able to bear the strains of their new responsibilities, particularly in regard to the maintenance of law and order and the food crisis. Above all, if the backwardness of India in industry, technological skill, agricultural production and the numerous other economic factors which rendered her ineffective, were to be remedied and the crucial problem of transforming her from an under-developed area into a great modern nation solved, by raising the standard of living, of health, of education and of general welfare, then the planning for all this had to be under a central direction unhampered by the statutory rights of provincial governments. The prolonged legal battles in the U.S.A, Australia and Canada on these issues had convinced the fathers of the Indian Constitution that wisdom lay in altering the balance in favour of the central government and entrusting the provinces only with such powers as would not hamper the policy of the centre in matters of general interest to the whole of India.<sup>1</sup> These events were combined with the task of framing the constitution and largely affected the outlook of members. A strong

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1. Austin, op.cit., pp.190-1; K.M. Panikkar, op.cit., p.155.

central government became a matter of urgent necessity. 'But the strengthening of the central authority', observes Dr. Spear, 'was no departure in principle but rather a fresh emphasis on a principle always stressed by the British.'<sup>1</sup>

The Drafting Committee, following the language of the Preamble to the British North America Act, 1867, adopted the term 'Union' instead of 'Federation' on the ground that it would not be inappropriate to describe India as a Union, although the constitution might be federal in structure.<sup>2</sup> According to Dr. Ambedkar, the word was used to indicate two things, (a) that the Indian federation was not the result of an agreement by the States and (b) that no State would have the right to secede from it.<sup>3</sup> Dr. Ambedkar explained that 'All federal systems including the American are placed in a tight mould of federalism'... It cannot be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances.'<sup>4</sup> The classic theory of federalism would hold no good in the context of India. The present world tendency was towards 'centralization of Powers'. One had to consider the 'progressive increase in the power of the National Government' in America, which notwithstanding, the very limited powers given to it by the constitution, had outgrown its former self and had overshadowed and eclipsed the State governments.<sup>5</sup> In order to counteract centrifugal and fissiparous tendencies, said another member, India required a strong central government.<sup>6</sup>

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1. Spear, op. cit., p.215.

2. Draft Constitution of India, p.2.f.n.

3. CAID, vol.vii, p.43.

4. Ibid., p.34.

5. Ibid., p.42; vol.xi, p.951; T.T. Krishnamachari.

6. Ibid., p.247; L.K. Maitra.

Federalism would lead to the 'vivisection of the country.' 'It is suicidal to divide powers into federal, concurrent and provincial. Any such division of powers will weaken the hands of the nation on all fronts.'<sup>1</sup> Political cohesion, said S.C. Majumdar, 'presupposed a strong unifying Central authority.'

'The time has now come to curb the bias in favour of the so-called "provincial autonomy" which arose from historical causes.'<sup>2</sup>

Some members criticised the inroads into provincial autonomy, that in some matters unnecessary provisions have been introduced, making it appear as if the Provincial Autonomy under this Constitution is much less than even under the Government of India Act of 1935.'<sup>3</sup> K.S. Karimuddin observed: 'Provincial autonomy ... is only a sham institution. If the opposition party is elected in some of the Provinces and the Centre does not want them to continue under any pretext, under any of the provisions of the law, the Constitution can be suspended.'<sup>4</sup>

K. Hanumanthaiya pointed out the centralised character of the constitution. 'The draft as it stands ... is rather too much over-Centralised. It practically makes the Indian Union a Unitary State and not a Federal State ... They [the framers] have given too much legislative and financial powers to the Centre, and have treated the provinces and States as though they were mere districts of a Province.'<sup>5</sup> Sampurnanand also criticised this feature. 'The attempt at centralisation of all power is hardly veiled and provincial governments have been sought to be reduced to the position of agents of the Centre.'<sup>6</sup> The emergency provisions especially came under heavy fire. Many members

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1. CAID, vol.vii, p.371; Brajeshwar Prasad.

2. Ibid., p.377.

3. CAID, vol.xi, p.718; K. Santhanam.

4. Ibid., p.725.

5. CAID, vol.vii, p.339. by

6. CAID, vol.xi; quoted J.R. Kapoor.



criticised that the provisions were 'far too sweeping' and reduced 'provincial autonomy to a farce'<sup>1</sup> and 'a sham institution.'<sup>2</sup> Article 277A of the draft constitution which later became Article 355 of the constitution laid down that it was the duty of the Union to protect every province from external aggression and internal disturbance, and to ensure that government in the provinces was carried on according to constitution. H.V. Kamath declared: 'I have ransacked most of the constitutions of democratic countries of the world ... and I find no parallel to this chapter of emergency provisions in any of the other constitution of democratic countries of the world. The closest approximation to my mind is reached in the Weimar Constitution of the Third Reich which was destroyed by Hitler taking advantage of the very same provisions contained in that constitution... But those emergency provisions pale into insignificance when compared with the emergency provisions in this chapter of our Constitution.'<sup>3</sup> The term 'internal disturbance' was described as 'a very wide and elastic'. It was feared that this particular term might be employed for political purposes if a party was elected in a province in opposition to the centre.<sup>4</sup> According to B. Das, these provisions would make the President a 'new Frankenstein', 'something like the South American Presidents who will exercise all emergency powers - all financial powers and even starve the provinces.'<sup>5</sup> The framers of the constitution did foresee such possibilities. Ambedkar stated in reply: '... it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political

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1. CAID, vol.ix, pp.142-3; S.L. Saksena.

2. Ibid., p.115; K.S. Karimuddin.

3. Ibid., p.105.

4. Ibid., pp.115-6; K.S. Karimuddin.

5. Ibid., p.517.

purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces ... The proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter.'<sup>1</sup> 'These emergency provisions', said T.T. Krishnamachari, 'have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the executive to safeguard the Constitution.'<sup>2</sup>

The emergency provisions bear close resemblance to similar provisions under the 1935 Act. 'The difference is, of course, that such powers are now to be wielded by an Indian authority drawing its sanction from the Indian people, rather than by a non-Indian authority responsible to the British Parliament.'<sup>3</sup> The reasons for including the emergency provisions in the constitution are clear. The framers, for all their doubts and reservations, felt that the central government of the new state in its infant stage of democratic experiment had to be given adequate authority and powers to deal with emergency situations arising from internal disorders and divisions or from external dangers. The security of India was a matter of far greater importance to them than provincial autonomy. The leaders had a fear, justifiably, in the light of contemporary and subsequent events that without a strong centre this infant democracy would be in danger of being destroyed by disintegrating forces from all sides, a decentralised scheme of

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1. CAID, vol.ix, p.177.

2. Ibid., p.125.

3. H. Furber, "Constitution-Making in India", Far Eastern Survey, April 20, 1949, p.88.

government was sure to let loose fissiparous tendencies resulting in the ultimate disruption of the country, particularly in view of the regrettable existence in India of the hydra-headed monster of provincialism, communalism, linguism, casteism, social and economic imbalance.<sup>1</sup> In several constitutions, particularly in the French Constitution between the years 1813 and 1853, provisions had been made for the declaration of what was called a state of siege, which perhaps was the counterpart of the constitutional dictatorship envisaged in Article 48 of the Weimer Constitution. Not even a country like England was completely free from the possible exercise of such emergency powers. After the First World War, England came under the Emergency Powers Act of 1920 wherein they gave full powers to the executive to deal with the situation as they liked and to issue proclamation of emergency subject only to parliamentary approval and for one month's duration.<sup>2</sup> Clauses similar to Article 355 appears in the American and Australian Constitutions but one clause has been added in the Indian Constitution, namely, that it shall also be the duty of the Union to maintain the constitution in the provinces as enacted by law. The clause which gives powers to the American President as the Commander-in-Chief to maintain law and order, to fight aggression and also to lead the country in times of war, is enormous. So, in incorporating these provisions the Indian leaders were merely following the example of America and Australia and had made no departure from an established principle.<sup>3</sup>

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1. See Norman D. Palmer, op. cit., p.115. A.K. Ghosal, "Federalism in the Indian Constitution", Indian Journal of Political Science, October-December, 1953, p.331.
  2. John Willis, The Parliamentary Powers of English Government Departments, (Harvard University Press, 1933), pp.109-111.
  3. See the speeches of Dr. Ambedkar and A.K. Ayyar in CAID, vol.ix, pp.150,176.

The unitary character of the constitution becomes evident from the division of powers among the three lists, Union, States and Concurrent (Part XI and Seventh Schedule)<sup>1</sup> and the vesting of residuary powers in the Union government unlike the Constitution of America or the Commonwealth of Australia; the control over and distribution of finances (Part XII); the organisation of all-India services (Part XIV); the appointment of State Governors by the President (Part VI, Chapter II); the right of parliament to form new States or alter existing boundaries or name of any State (Article 3). There are also important emergency provisions (Part XVIII) which enable the government and parliament of the Union to convert the Union into a unitary state if it believes that the situation warrants it. Article 352 says that the President of India may, if he is satisfied that a grave emergency exists whereby the security of India or any part of it is threatened, whether by war or external aggression or internal disturbance, issue a proclamation of general emergency. Such a proclamation expires after two months unless it is approved by the Union parliament. The effect of the proclamation is to give the executive of the Union power to control the executive of the States and the Union parliament to legislate upon any matter irrespective of whether it is within the competence of the States. Under Article 356 the President has powers also, if he is satisfied that the government of a State cannot be carried on in accordance with the provisions of the constitution, to direct that the government of the State be, in effect, taken over by the executive and parliament of the Union. Besides emergency powers, there are in addition other similar powers of intervention and direction in the administration of State

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1. The powers granted in the exclusive Union list (97 items) and in the Concurrent list (47) cover, as in Western Germany, almost all subjects of importance and what is left to the exclusive authority of the States (66) tends to be of subordinate concern.

affairs in the constitution which reduce the independence and sovereignty of the States. After analysing these provisions the observers have concluded that the Indian Constitution is 'quasi-federal'.<sup>1</sup> K.V. Rao had effectively demonstrated that the working of these provisions pointed to a trend towards a unitary state. He had established how the State Governor was becoming an agent of the centre, how the initiative was taken from the States and how collective responsibility in the States had come to mean merely understanding the policy of the centre and executing it. He asserted that the Union government, especially the Planning Commission (created in 1950) - which he described as 'a new Leviathan' and 'the Super-cabinet' - was in practice usurping powers which it did not formally possess under the constitution. This 'super-cabinet' was entrusted with the taking of all important decisions, while the central cabinet had become only a registering body.<sup>2</sup> It has been defined by another writer as 'the Economic Cabinet, not merely for the Union but also for the States.'<sup>3</sup> Myron Weiner castigated this process of usurpation as 'a kind of unprincipled authoritarianism, where the ideals of a democratic, pluralistic society operate, but where, in reality, government is centralized, leadership tends to be authoritarian, decisions are made by a relative few, and responsibility ... is weak and remote.'<sup>4</sup> As Benjamin N. Schoenfeld pointed out: 'When the character of the Indian government is viewed in terms of the socialist objectives of the planned economy which has been an adopted goal in India, then the federal character of that government becomes even more difficult to envisage.'<sup>5</sup>

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1. K.C. Wheare, Federal Government, p.27; D.N. Banerjee, Some Aspects of the Indian Constitution, especially ch.iv.
  2. K.V. Rao, "Centre-State Relations in Theory and Practice," Indian Journal of Political Science, October-December, 1953, pp.349; 353-55.
  3. Asok Chanda, Indian Administration, p.92.
  4. M. Weiner, "Some Hypotheses on the Politics of Modernization in India," in R.L. Park and I. Tinker (eds.), Leadership and Political Institutions in India, p.24.
  5. Benjamin N. Schoenfeld, "Federalism in India - II", Indian Journal of Political Science, July-September 1959, p.195.

The powers of reorganisation and intervention had been exercised in practice. The new State of Andhra was created in 1953 out of the States of Madras and Hyderabad, and the political map of India was redrawn on a linguistic basis by the States Reorganisation Act of 1956. From the inauguration of the constitution until 1956, there were no proclamations of national emergency made under the President's powers. Through 1956 there were four instances of President's rule or intervention by the Union to suspend the government of a State (the Punjab, 1951; PEPSU, 1952; Andhra, 1954; Travancore-Cochin, 1956).<sup>1</sup>

The problem of bringing the Princely States into an Indian federation posed a problem of great magnitude to the Constituent Assembly. These States numbered about 562 and varied in size from small tiny principalities to big States like, Mysore, Hyderabad, etc., covering more than one-third of the territory of India and one-fourth of the population of the country. When the British left they declared that all the treaties and engagements they had with the Princes had lapsed. The paramountcy which they had so long exercised and by which they could keep the Princes in order also lapsed. The Indian government was then faced with the problem of tackling these States which had different traditions of rule. Some of them had some form of popular representation in Assemblies, while some had completely autocratic government. As a result of the declaration that the treaties with the Princes, together with <sup>the</sup> paramountcy had lapsed, it became possible for any Prince or any combination of Princes to assume independence and even to enter into negotiations with any foreign power. The Constituent Assembly had, therefore, at the very beginning of its labours, to enter into negotiations

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1. See Austin, op.cit., p.216; A. Gledhill, op.cit., p.111; M.V. Pylee, Constitutional Government in India, pp.585-6.

with them to bring their representatives into the Assembly so that a constitution might be framed in consultation with them. During the period of nearly three years that elapsed between the first session of the Assembly and the final adoption of the constitution big changes took place and the States falling within the territorial jurisdiction of India or adjoining it not only acceded to India but had practically fallen into line with the provinces. A very large number of these had been integrated with the adjoining provinces, others had formed unions of their own and thus became integrated units. This task of administrative integration was undertaken and accomplished by the State's Ministry under the guidance of Sardar Patel and has been described elsewhere.<sup>1</sup> The constitution mentioned all its component units, comprising both the provinces and the Indian States, simply as States. The territories of the States were described in Part A, B and C in the First Schedule. Part A States corresponded to the former Governors' provinces. Part B States represented the former bigger Princely States. Part C States represented the former Chief Commissioners' provinces plus smaller Princely States. Under this system, the constituent States of the Union had no uniform status. All the Part A States were full-fledged members of the Union and their status were based on the concept of federalism. Part B States were not to enjoy the fullest measure of autonomy as defined by the constitution. Article 371 laid down that the government of all Part B States were to be under the general control of, and comply with such particular directions as issued by the President. Another noteworthy feature of the Part B States was that they were headed by Rajpramukhs and not Governors as in the case of Part A States. The Part C States were directly administered by the Union on a unitary basis.

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1. See V.P. Menon, The Story of the Integration of the Indian States.

The number of these States made a total of 28. In addition, there was another category known as the Part D States (the Andaman and Nicobar Islands) which were under the direct and full control of the Union government. The integration of the Princely States into the Indian federation has been described by Dr. Spear as a 'revolutionary change' in the constitution.<sup>1</sup> As a result of the States Reorganization Act, 1956, the four-tier state-system was reduced into two and India has become a Union of fourteen States and six centrally administered territories. Under the new scheme all the States have equal status. C.H. Alexandrowicz observes: 'Constitution-making was terminated in 1949, but federation-making has only begun and will presumably last for years to come ... The boundaries of the provinces and states did not generally coincide with the frontiers of linguistic communities in the Indian subcontinent with all their different traditions and cultures. These communities, though deprived of an opportunity of bargaining in the process of constitution-making, have now appeared on the political horizon and have brought about a re-drawing of the federal map of India.'<sup>2</sup>

During the process of drafting a new constitution considerable time and energy were devoted to the language question. The question was whether India should have one or more languages as the official language. It was apparent that nascent nationalism demanded an Indian 'national' language and that English, associated with the British rule could not retain this status indefinitely and that no nation could become great on the basis of a foreign language.<sup>3</sup> In India the complexity of the problem was enhanced by the fact that there were over a dozen different well-developed languages with their appropriate

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1. Spear, op.cit., p.216.

2. Alexandrowicz, op.cit., pp.3-4.

3. See CAID, vol.ix; J. Nehru, p.1410.



scripts, each spoken by a large number of people. In view of the number of languages the problem defied easy solution that had been successfully employed in countries like Switzerland, Belgium and Canada, of a general and wide-spread bilingualism or multi-lingualism. The 1951 census by lumping Hindi together with Urdu, Hindustani and Punjabi produced about 42 per cent of the total population as speakers of this language. With the attainment of independence, the problem that presented itself to the Indian leaders was to devise a linguistic medium which would maintain the political unity of the country, and subserve in the words of Article 351 of the Constitution, 'as a medium of expression for all the elements of the composite culture of India.'

The problem of the official language had assumed formidable proportions even in the early stages of the deliberations of the Assembly when some of the members insisted upon the business of the House being conducted in Hindi. They also demanded the official text of the constitution to be adopted by the Assembly in Hindi and not in English. The President of the Assembly, Dr. Rajendra Prasad, managed to tackle the situation by assuring these members that the Hindi version of the constitution would simultaneously be made ready along with English. Mainly because of the sharp differences that existed between the pro-Hindi group and those who opposed them, the Assembly postponed the consideration of the question to almost the very last stages of its deliberations.<sup>1</sup>

The Union Constitution Committee recommended in its report that the language of the Union Parliament should be Hindustani (Hindi or Urdu) or English with the members permitted

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1. Pylee, op. cit., pp.664-5.

to use their mother-tongue if necessary<sup>1</sup>. The Provincial Constitution Committee recommended that in provincial legislatures business should be transacted in the provincial language, or languages, or in Hindustani or in English.<sup>2</sup> When these two reports were presented in the Assembly in July 1947, the debate on the question of language was postponed because it was recognised as 'a controversial matter.'<sup>3</sup>

With the partition of India the Assembly members turned against Hindustani. As one member, K. Santhanam, explained, 'If there had been no Partition, Hindustani would without doubt have been the national language but the anger against the Muslims turned against Urdu.'<sup>4</sup> In the draft constitution which appeared in February 1948 there was no mention about official language but it was provided that the language to be used in parliament was Hindi or English with the members permitted to use their mother-tongue if necessary. In the provincial legislatures the business should be transacted in language or languages used in that province or in Hindi or in English.<sup>5</sup> There was no set debate on the language question in the Assembly though occasionally there were stray references to the 'linguistic fanaticism' of the Hindi-speaking members by the members from the South and Bengal.<sup>6</sup> Nehru urged adopting a more cautious approach, while not attempting to impose a particular language even by a majority on an unwilling minority.<sup>7</sup>

There was a fair measure of agreement that Hindi should be the official language of the Union but the Assembly members split into bitterly contending factions over the other issues. The

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1. Constituent Assembly, Reports of Committees (First Series), p.53.

2. Ibid., pp.38-9.

3. CAID, vol.iv, p.691; Sardar Patel.

4. Quoted in Austin, op.cit., p.277.

5. Draft Constitution of India, 1948, pp.44, 83.

6. See CAID, vol.vii, pp.234-5, 249.

7. Ibid., p.321.

central points of the controversy were the length of time English should continue to be used as the language of government and the status to be accorded other regional languages. The militant Hindi-speaking members from the provinces of North-Central India constituted one faction. This group believed that Hindi should be not only the 'national' language by virtue of being the most popular and wide spoken language but that no other language had acquired an all-India importance and it should replace English for official Union purposes at the earliest possible moment. In opposition were the moderates who came largely from South India, Bombay and Bengal. Some of the national leaders like Nehru were associated with this group. They believed that Hindi might be declared the 'official' language of the Union because spoken by the largest number of Indians but that the other regional languages should have national status. They also demanded that English, as the de facto national language should be replaced gradually and cautiously.<sup>1</sup>

Hence a compromise formula which became known as the Munshi-Ayyangar formula was approved. All major Indian languages were listed in the Eighth Schedule. The languages were not made either national or official languages, as in the Swiss, Pakistan and South African Constitutions, the only constitutions in which the languages of the country are given by name.<sup>2</sup> Hindi in Devanagiri script was made the 'official language' of the Union; and English was to continue as the 'official language' for fifteen years from the commencement of the constitution. The change-over to Hindi was to occur in 1965 unless parliament legislated otherwise. So far as the 'official language' of

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1. Austin, op.cit., pp.266-7.

2. Ibid., p.297. Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Tamil, Telugu, Urdu. Sanskrit was added later in the final constitution, though it was returned as a mother-tongue of only 555 persons in the 1951 census. While English which was shown as the mother-tongue of 171,742 persons was not mentioned. 'By this action', one writer observed, 'the framers of the Constitution have undoubtedly shown their anti-English bias', K.C.Sen, "The Official Language of the Union", Economic Weekly, October 19, 1957, p.1363.

a State was concerned it was provided that a State might adopt any one or more of the languages in use in the State or Hindi as the official language but English was to be continued unless a State legislature otherwise provided. The formula provided for the formation of language commissions in 1955 and 1960 to recommend to the President, among other things, for the progressive use of Hindi for the official purposes of the Union. A provision was made, however, that within the stipulated period of 15 years the President might authorise the use of Hindi in addition to English for any of the official purposes of the Union.

According to N.G. Ayyangar, the Congress Assembly Party members 'reached a fairly unanimous conclusion' over the language provisions. The provisions were the result of 'a great deal of thought' and 'a great deal of discussion' - 'a compromise between opinions which were not easily reconcilable.'<sup>1</sup> But Dr. Ambedkar later revealed that the Congress Assembly Party meeting reached deadlock over the Hindi question. Finally it was resolved in favour of Hindi by the margin of only one vote.<sup>2</sup> According to the Hindu, this one-vote margin was made possible only because Congress members of the Constituent Assembly 'had to obey the Party's directive.'<sup>3</sup> It was very largely owing to the importunity of the north Indian Hindi-speaking members of the Congress Party, told a distinguished member from the South, Dr. P. Subbarayan, 'that the people in non-Hindi areas agreed to accept Hindi, the majority of them with reservation.'<sup>4</sup> This was also corroborated by Dr. S.K. Chatterji, one of the members of the Official Language Commission.<sup>5</sup>

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1. CAID, vol. ix, pp. 1317, 1319.

2. B.R. Ambedkar, Thought on Linguistic States, p. 14.

3. Hindu, January 27, 1958; quoted in Selig S. Harrison, India: The Most Dangerous Decades, p. 9.

4. P. Subbarayan, "Minute of Dissent", Report of the Official Language Commission, 1956, p. 319.

5. Ibid., p. 283.

In September 1949 a new part XIV-A on language was introduced in the Assembly. The complexity of the language problem could be gauged from the speech of the President of the Assembly, Dr. Prasad. He said: 'There is no other item in the whole Constitution which will be required to be implemented from day to day, from hour to hour ... from minute to minute in actual practice .... It will not do to carry a point by debate ... The decision of the House should be accepted to the country as a whole', otherwise, 'the implementation of the Constitution will become a most difficult problem.'<sup>1</sup> While Prasad and other national leaders were asking for a unanimous decision, the Hindi supporters, confident of their majority support, argued that if there were differences on any issue it could only be decided by votes. The Hindi protagonists declared that Urdu had largely drawn inspiration from outside India. India had one cultural tradition for thousands of years and in order to maintain this tradition India required one language and one script for the whole country. This language could only be Hindi, not Hindustani or Urdu. The use of English in the Hindi-speaking areas for 15 years was regarded as 'a retrograde proposition.'<sup>2</sup> Purushottam Das Tandon hoped that the replacement of English by Hindi would begin within a much shorter time. He saw the limitations upon Hindi as unduly restrictive. He cited the example of Ireland, which had not much literature and a sufficient vocabulary, yet adopted Irish as the national language. But Hindi, Tandon believed, was already a powerful language and 'with the backing of Sanskrit can face all the difficulties of vocabulary with ease.'<sup>3</sup> Hindi supporters regarded the language provisions as 'a fraud on the Constitution

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1. CAID, vol. ix, p. 1312.

2. Ibid., pp. 1325, 1327-8; Seth Govind Das.

3. Ibid., pp. 1443, 1445.

itself,' which 'perpetuates English for many, many years to come.'<sup>1</sup> Nehru detected 'a tone of authoritarianism' in the speeches of Hindi-speaking members and called it 'a dangerous approach' to impose a language upon other people. Nehru regarded Hindi not in its restricted sense, but in the broader sense, as representing that composite language which was both the language of the people and the language of various groups and others in Northern India. Gandhi stood by that interpretation and made it an inclusive language by incorporating all the language elements in India, together with some Urdu or a mixture of Hindustani. This language, Nehru emphasised, was to be allowed to grow naturally, and not to be forced upon an unwilling people.<sup>2</sup> Mrs. Durgabai of Madras advocated a broad-based Hindi and not the 'special brand of C.P. or U.P. Hindi.'<sup>3</sup> S.P. Mookerjee of Bengal welcomed the listing of principal regional languages of India in the draft, but he pointed out that many people belonging to non-Hindi speaking areas had become nervous about Hindi because of the aggressive character of the protagonists of Hindi in insisting upon their demands.<sup>4</sup> Originally some members outside the controversy, such as Sardar Hukam Singh and Frank Anthony, supported the adoption of Hindi in Devanagari script; but gradually they shifted their position because, as one member observed, of the 'fanaticism' and 'intolerance' of the supporters of Hindi.<sup>5</sup> The effort to sanskritcize Hindi was described as 'a retrograde step.'<sup>6</sup> There were a few members from Bengal, Assam and from the South who suggested the adoption of Sanskrit as the national language. Dr. P. Subbarayan and Sardar Hukam Singh proposed the adoption of Hindustani in Roman script. Other amendments came from Muslims. The Muslim members (including Azad) supported Hindustani, written

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1. CAID, vol.ix, p.1469; Prof. S.L. Saksena.

2. Ibid., pp.1411, 1414-5.

3. Ibid., pp.1426, 1428.

4. Ibid., p.1391.

5. Ibid., p.1436-7; Sardar Hukam Singh.

6. Ibid., p.1440; Jaipal Singh.

in both Devanagari and Urdu scripts, as a national language. They pointed out that this was the solution of the language problem envisaged by Gandhi, for which the Congress had stood for twenty years. Some suggested the continuation of English until an all-India language was evolved. Amendments were moved for the inclusion of Sanskrit and English in the Schedule.

More than 300 language<sup>amendments</sup> were submitted but finally all but five were withdrawn. The amendments of five members were put to the vote and were rejected by a large majority.

Since the inauguration of the constitution, the Union government has not employed Hindi to any great extent in the conduct of its affairs. English is still for the greater part, the language of the Union.<sup>1</sup> According to the Report of the Official language Commission, 'considerable progress' has been made in the Hindi-speaking States in using Hindi. Several of these States (Bihar, Madhya Bharat, Rajasthan and Uttar Pradesh) have passed Official Language Acts. Among the non-Hindi speaking States only Madhya Pradesh (Marathi and Hindi), Orissa and Saurashtra have adopted their regional languages. In other States English has continued to be used as their official languages. In the case of Uttar Pradesh, Madhya Bharat, Rajasthan and Saurashtra, this provision has been fully implemented.<sup>2</sup> In the Lok Sabha, the percentage of speeches delivered in English was about 83 per cent and 16 per cent in Hindi, and under 1 per cent in regional languages. In the Rajya Sabha, about 85 per cent of speeches were delivered in English and 13 per cent in Hindi during the period 1954.<sup>3</sup> In the State legislatures 'the large bulk of speeches' are delivered in regional languages.<sup>4</sup>

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1. Report of the Official language Commission, 1956, p.118.

2. Ibid., pp.139, 150-1, 443-50.

3. For a full list of the use of different languages in the central and all provincial legislatures see Ibid., pp.451-5.

4. Ibid., p.173.

The theoretical adoption of Hindi in the constitution in 1949 was thought to be something very simple. Now Indian leaders are facing the 'stark realities of the situation'. After the move by the central government and the Hindi speaking States to adopt Hindi, which has become more and more insistent, the linguistic problem has assumed 'a very great importance.' It has taken the form of rivalry between Hindi speaking and non-Hindi speaking States; between regional languages and English; and between English and Hindi. These rivalries are posing a threat to the unity and solidarity of India.<sup>1</sup> In this connection, the observations of Sir Ivor Jennings may be recalled. Jennings remarked that the Indian Constitution 'vests control in the Hindus of the north and provides no adequate protection for minorities.' 'If Hindi were the national language the Hindi-speaking peoples of the north would become as dominant a class as the English-speaking are now. English is at least neutral, a language which all can learn on equal terms. Hindi would give a preference to some and so would be anathema to others.'<sup>2</sup>

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1. S.K. Chatterjee, "Note on the Report of the Official Language Commission as a Minority Report", and P. Subbarayan, "Minute of Dissent" in Report of the Official Language Commission, 1956, pp.284, 320.
  2. Jennings, Some Characteristics of the Indian Constitution, p.64; Jennings, The Commonwealth in Asia, p.48.



## CHAPTER VI

## CONSTITUTION-MAKING IN PAKISTAN, 1947 - 1956

The Constituent Assembly of Pakistan comprised those members of the original Constituent Assembly of undivided India who now belonged to Pakistan. At the time of its inauguration the total membership of the Assembly was sixty-nine.<sup>1</sup> Additions were made to the Assembly in order to give representation to the Muslim migrants from India, five extra Muslim seats were given to the Punjab and one to Sind together with members nominated to represent the Princely States which had joined Pakistan. These included Bahawalpur, Khairpur, Chitral and Swat to which were allotted one seat each. At the end of its life the Assembly had a total of eighty seats. But many members were not in a position to attend sessions as they held offices as ministers, governors and ambassadors. The average sessional attendance of members was calculated to range from thirty-seven to fifty-six for the period from 1947 to 1954.<sup>2</sup> Just as the Congress dominated the Indian Constituent Assembly, so the personnel of the Pakistan Constituent Assembly comprised an overwhelming Muslim League majority; and an opposition mainly consisted of twelve Hindu members who belonged to the Congress Party and Mian Iftikharuddin who represented the Azad Pakistan Party. Apart from these opposition groups, one belonged to the Scheduled Castes Federation. Shaukat Hyat Khan was a former Unionist and Khan Abdul Ghaffar Khan was a 'Redshirt' who was in jail

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1. Civil and Military Gazette, August 12, 1947.

2. Callard, op. cit., p.80.

for a considerable period of time.

The constitutional debate in Pakistan was even more long-drawn-out than in India and a constitution was not finally adopted until February 1956. It took almost eight and a half years. Until then, the Government of India Act, 1935 became (with certain adaptations) the basis of Pakistan's interim government. The Constituent Assembly was given two separate roles: to prepare a constitution, and to act as the parliament until that constitution came into force. The 1956 Constitution was never fully put into operation, and was totally suspended by the military regime in October 1958. There were many reasons for this protracted delay. After the death of Jinnah and Liaquat Ali Khan, Pakistan's politics was marked by momentous political conflict, involving constitutional crisis. Concurrent with this was the growing factionalism within the Muslim League. There were fundamental differences on two major questions: the role of Islam in the political system, and the problem of relationships between the East and West wings and the central government. How far could Islamic principles be incorporated in the constitution? What would be the position of non-Muslims in an explicitly Islamic state? What would be the nature of the federation? Would it have a strong centre or a weak centre? Whether Pakistan should have one state language or two. Inability to find answers to these intractable problems and other questions delayed the prospect of an early constitution in Pakistan.

In surveying the proceedings of the two Constituent Assemblies we may note eight important milestones marking the progress towards the framing of a constitution.

(1) March 12, 1949, The Constituent Assembly passed an Objectives Resolution, the first main step in the framing of the constitution, and voted to appoint a committee known as the Basic Principles Committee which should recommend the main principles on which the future constitution should be based.

(2) September 7, 1950, the Interim Report of the Basic Principles Committee was presented to the Assembly.

(3) December 22, 1952, the Report of the Basic Principles Committee was presented to the Assembly.

(4) October 7, 1953, the constitutional deadlock over the structure of the federal legislature was resolved by the 'Mohammed Ali formula' and the debating of the 80-page report began in earnest.

(5) September 21, 1954, the Report of the Basic Principles Committee (as amended) was adopted by the Assembly.

(6) September 30, 1955, the Assembly passed the Establishment of West Pakistan Act, merging the provinces and small principalities of the West into 'one unit'.

(7) January 9, 1956, a draft constitution was presented to the Assembly, and the Assembly took up the consideration of the draft clause by clause.

(8) February 29, 1956, after the 52-day debate, the Constitution of the Islamic Republic of Pakistan was finally adopted.

The first and the most difficult task faced by the framers of the constitution was to decide the exact Role of Islam in the state. It was generally agreed that Pakistan should become an Islamic state, but there was no agreement as to the meaning of the term 'Islamic State'. This caused a long-drawn-out controversy between the Western-educated politicians and the ulama. We have discussed Jinnah's view regarding the future form of the constitution in chapter ii.<sup>1</sup> While Jinnah

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1. See ch. ii.

did not live long enough to offer a constitutional formula, he seemed to envisage a modern secular state, similar to new India. So long as Jinnah was alive everybody seemed to agree to his vision of a secular state. But even during his (Jinnah's) lifetime, G.M. Sayed, the Sind Muslim League leader, found in Jinnah's speech a 'chastened mood' which amounted to an abandonment of those fundamental principles on which the Muslim League had based its programme and carried on its struggle for Pakistan. The Dawn tried to correct this 'misinterpretation' of Jinnah's speech. According to <sup>the</sup> Dawn, Jinnah merely meant that 'a Hindu or any other person not professing the Muslim faith will not be debarred from participating in the administration of Pakistan, nor will be discriminated against by its laws, nor will he suffer economically.'<sup>1</sup> The ulama, who remained silent at that time, later pronounced that a state based on this idea would be 'the creature of the devil'. None of the ulama could tolerate a state based on nationalism, with all that implied.<sup>2</sup> Maulana Shabbir Ahmad Osmani, an outstanding figure among the ulama of Pakistan and the President of the Jami'at-ul-Ulama-i-Islam, completely by-passed the inaugural speech of Jinnah to the Constituent Assembly. He reminded: 'Islam has never accepted the view that religion is a private affair between man and his Creator and as such has no bearing upon the social or political relations of human beings.'<sup>3</sup> Osmani referred to a letter written by Jinnah in November 1945 to the Pir Sahib of Manki Sharif (a religious leader of N.-W.F.P.) in which he was believed to have stated that the Constituent Assembly, a predominantly Muslim body, would frame laws not inconsistent with the Shariah

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1. Dawn (Delhi), August 26, 1947, editorial, 'Perverse Propaganda', quoted in K.B. Sayeed, Pakistan: The Formative Phase, p.274.
  2. Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab disturbances of 1953, (cited hereafter as Munir Report), p.203.
  3. CAPD, vol. v, p.44.

and the Muslims would no longer be obliged to abide by un-Islamic laws.<sup>1</sup> Khwaja Nazimuddin, a veteran Bengali Muslim Leaguer, who after Jinnah's death became Governor-General and then followed Liaquat Ali Khan as Prime Minister, stated that Jinnah himself preserved the ideal of an Islamic constitution and that it was on this assurance that Pakistan had been achieved. Nazimuddin explicitly stated that a single nation, consisting of Muslims and non-Muslims with equal rights of citizenship was not Jinnah's view of an Islamic state.<sup>2</sup> So Jinnah's view was rapidly by-passed by the ulama and the politicians alike. The politicians who tried to evolve a via media between the principles of democracy and the principles of Islam were not successful in their attempts for a long time. The Objectives Resolution which was introduced by Prime Minister Liaquat Ali Khan on March 7, 1949 and passed by the Assembly on March 12, 1949, was to embody the main principles on which the constitution of Pakistan was to be based. It began with the Islamic invocation to the Almighty: 'In the name of Allah, the Beneficient, the Merciful' and proceeded to state that 'sovereignty over the entire universe belongs to God' and that the authority delegated by Him to the people of Pakistan is a sacred trust. The resolution envisaged a sovereign independent state exercising its powers and authority through the chosen representatives of the people in which the principles of democracy, freedom, equality and social justice, as enunciated by Islam, should be fully observed, and where Muslims might lead their lives in accordance with Islamic teaching. Fundamental rights were to be guaranteed to all, and

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1. CAPD, vol. v, p.46.
  2. Munir Report, p.295.

adequate provision was to be made to safeguard the religious, cultural and other legitimate interests of the minorities.<sup>1</sup>

Liaquat Ali Khan in his speech said that 'Pakistan was founded because the Muslims of this sub-Continent wanted to build up their lives in accordance with the teachings and traditions of Islam, because they wanted to demonstrate to the world that Islam provides a panacea to the many diseases which have crept into the life of humanity today.'<sup>2</sup> But he also wanted to emphasise that a state based upon Islam would not be a theocracy. 'Islam does not recognise either priesthood or any sacerdotal authority; and therefore the question of a theocracy simply does not arise in Islam.'<sup>3</sup> Liaquat Ali Khan seemed quite sure that Islam was on the side of democracy. 'As a matter of fact it has been recognized by non-Muslims throughout the world that Islam is the only society where there is real democracy.'<sup>4</sup> In this approach he was supported by Maulana Osmani. 'The Islamic State is the first political institution in the world which abolished Imperialism, enunciated the principle of referendum and installed a Caliph (head of the state) elected by the people in place of the King.'<sup>5</sup>

Liaquat Ali Khan deplored the activities of certain 'so-called Ulemas'<sup>6</sup> who, in fact, misrepresented Islam. Dr. Omar Hayat Malik talked of 'limited democracy'. 'The principles of Islam and the laws of Islam as laid down in the Quran are binding on the State'.<sup>7</sup> The resolution was strenuously debated for five days. During the debate, the Muslim speakers uniformly supported the resolution as the corner-stone of the new constitution.

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1. CAPD, vol. v, pp.1-2.

2. Ibid., p.2.

3. Ibid., p.3.

4. Ibid., p.96.

5. Ibid., p.46.

6. Ibid., p.94.

7. Ibid., p.78.

Dr. I.H. Qureshi explained: 'The Resolution says that our polity should be based upon God-consciousness.'<sup>1</sup> Iftikharuddin, though still a member of the Muslim League, expressed the only Muslim criticism of the resolution: 'I see that a section of the press gave it out as if they scored a journalistic scoop by reporting that the authority is derived from the Higher Power. Sir, the authority, whether we say it or not, is derived from that Power. It does not lie within our power to change the laws of nature or ... Nature's God... In having stated that, we have not done anything very extraordinary...'<sup>2</sup> He deplored its failure to guarantee political, social and economic justice. 'The fight in this country, is not going to be between Hindus and Muslims. The battle in times to come will be between Hindu have-nots and Muslim have-nots on the one hand and Muslim and Hindu upper and middle classes on the other.'<sup>3</sup> Qureshi, Zafrullah Khan, and Dr. Mahmud Husain declared that the preamble merely affirmed the need to keep religion as a moral force linked to politics, finding fault with Western notions of separating religion from politics. Mahmud Husain referred to Bodin, blaming him for introducing the idea of absolute sovereignty, and cited Machiavelli, whom he blamed for the modern concept of raison d'état;<sup>4</sup> then he summed up stating: 'The plain question is whether we propose to bring back morality to that sphere from which it has been banished, namely, the political sphere.'<sup>5</sup>

The ministers who spoke for the government emphatically repudiated the accusation that the privileges and status of non-Muslims would be less than those of Muslims. 'A non-Muslim', said

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1. CAPD, vol. v, p.39.
  2. Ibid., p.51.
  3. Ibid., p.54.
  4. Ibid., p.84.
  5. Ibid., p.85.

Liaquat Ali Khan, 'could be the head of the administration.'<sup>1</sup> Zafrullah Khan deplored the reputation for intolerance that Muslims had earned for themselves and asserted that Islam itself had from the beginning inculcated the widest tolerance. The minorities would be protected by the very teaching of the Quran guaranteeing freedom of conscience.<sup>2</sup> Sardar Nishtar replied that nothing was being done, or proposed to be done, that was contrary to the declarations of Jinnah. He also explained that even if Jinnah had given pledges to the minority communities, he had also given pledges to the majority and the Objectives Resolution was intended to redeem pledges to the majority as well as to the minorities.<sup>3</sup> Several government leaders argued that Islamic democracy offered a middle way between Capitalism and Communism. Nishtar suggested that a society based upon Islamic principles could be the best alternative.<sup>4</sup> Osmani asserted that the Islamic state could bring about an equitable distribution of wealth by employing methods peculiar to it and distinct from communistic practices.<sup>5</sup>

The Objectives Resolution had produced mixed reactions. A section of the intelligentsia thought that its effect was to put aside, or render obsolete, Jinnah's concept of a modern national state. Others characterised the resolution as 'nothing but a hoax' which did not 'contain even a semblance of the embryo of an Islamic State' and whose provisions 'particularly those relating to fundamental rights, are directly opposed to the principles of an Islamic State.'<sup>6</sup>

The Interim Report of the Basic Principles Committee<sup>7</sup>

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1. CAPD, vol. v, p.95.

2. Ibid., p.69.

3. Ibid., p.62.

4. Ibid., pp.62-3.

5. Ibid., p.45.

6. Munir Report, p.203.

7. The B.P. Committee was appointed on March 12, 1949. The Interim Report was presented to the Assembly in September 1950. It was a short document covering thirty-eight pages in the Constituent Assembly Official Debates. See CAPD, vol.viii, pp.13-50.



was attacked by the ulama on the ground that it failed to give the constitution a sufficiently Islamic colour.<sup>1</sup> The debate on the report was put off indefinitely in order to allow members of the public to make suggestions to the Basic Principles Committee. The number of suggestions received was described by the committee itself as 'enormous',<sup>2</sup> and a special sub-committee was appointed to examine these suggestions and to suggest appropriate amendments. After nearly four years of work, the Report of the Basic Principles Committee, a 80-page document, was introduced in the Assembly by Nazimuddin on December 22, 1952. The report was the result of long discussions held with the ulama.<sup>3</sup> In his speech presenting the report, Nazimuddin stated that it corresponded not only to the aspirations of Pakistan but also to its needs and genius - which was a synthesis between the principles of democracy and the principles of Islam.<sup>4</sup> He announced with pride that the constitution recommended by the Basic Principles Committee was 'fully democratic, even more democratic than the constitutions of many' old democracies.<sup>5</sup> In his view, the recommendations implemented the terms of the Objectives Resolution by interpreting the principles of Islam in the light of twentieth century democratic practice.<sup>6</sup> The provision that the head of the state must be a Muslim was not a departure from recognised democratic practice. It was justified by reference to the fact that the monarch of the United Kingdom should be a member of the Church of England.<sup>7</sup>

The recommendations made elaborate provisions whereby

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1. Round Table, March 1951, p.172.
  2. Report of the Basic Principles Committee (1952), p.i.
  3. Munir Report, p.295. The B.P.C. report was signed by twenty-one Muslims (Mian Iftikharuddin dissenting) and by three Hindus. Report of the Basic Principles Committee (1952), p.ii.
  4. CAPD, vol. xii, pp.57-8.
  5. Ibid., p.61.
  6. Ibid., p.57.
  7. Ibid., p.59.

no laws could be enacted which were repugnant to the Quran and Sunnah.<sup>1</sup> A board of ulama, consisting of persons well-versed in Islamic laws, was to be set up to whom all proposed legislation could be referred in order to ensure that nothing repugnant to the Quran and Sunnah should be enacted. In fact, as the Munir Commission described it, this Report of the Basic Principles Committee made provisions whereby the ulama would have a virtual veto on the working of the legislature.<sup>2</sup> The recommendations designed to ensure the Islamic character of the state were controversial. Some of them found place in a set of 'Directive Principles of State Policy' which included the prohibition of drinking, gambling and prostitution, and the elimination of usury.<sup>3</sup> The ulama received some encouragement from Nazimuddin who, to quote the Munir Report, was 'intensely religious and a man of deep and sincere convictions.' He tried to avoid a 'head-on clash' with the ulama,<sup>4</sup> who appeared to gain the upperhand: with the result that the proposals of the committee caused the utmost dismay amongst the modernists and intellectuals among whom must be numbered most of the civil servants and officers of the defence service.<sup>5</sup> The report was widely condemned as un-Islamic, because it appeared to give recognition to the existence of a priesthood, and undemocratic because it placed in authority bodies of persons who were not elected by the people and not responsible to them. Government spokesmen pointed out that the board would have only advisory powers, but the intelligentsia remained unconvinced and regarded this proposal as a surrender to the mullahs and the forces of

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1. Report of the Basic Principles Committee (1952), pp.6-7.
  2. Munir Report, p.289.
  3. Report of the Basic Principles Committee (1952), p.2.
  4. Munir Report, p.264.
  5. F.M. Innes, "The Political Outlook in Pakistan", Pacific Affairs, December 1953, pp.305-6.

obscurantism.<sup>1</sup> The report did not appear to satisfy the aspirations of the ulama either. Thirty-three ulama published a statement disapproving of the proposal to set up a board of ulama and instead they demanded that five ulama should form a kind of special Supreme Court which, in consultation with one judge from the existing Supreme Court, qualified for the purpose by his knowledge of Islamic law, would decide whether laws enacted by the legislature were repugnant to the Quran and Sunnah or not.<sup>2</sup> This suggestion was described by Pakistan's leading newspaper Dawn as 'Ulemacracy'.<sup>3</sup> Two other ulama proposed the appointment of Qazis. The ulama also demanded that Ahmadis should be declared as a separate community.<sup>4</sup> Governor-General Ghulam Mohammad in a speech in May 1953 said that there were some people who wanted Pakistan to be ruled by the dictates of a few ulama who should have special powers vested in them but there was no authority in the Quran for the proposition that only certain people had the sole right to interpret and represent Islam.<sup>5</sup> Inside the Assembly, there were several sharp critics of the report. Shaukat Hyat Khan called the report 'nothing but hypocrisy'.<sup>6</sup>

The requirement that the head of ~~the~~ state should be a Muslim, the deception of the people by proposing a board of ulama, and the proposal for separate electorates, according to him, constituted a breach of faith.<sup>7</sup> Iftikharuddin was more severe in his attack. The Islamic constitution promised by Liaquat Ali Khan was understood to offer a new type of democracy which would not be sham but would be real, that would not only

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1. Round Table, March 1953, pp.173-4.

2. Dawn, January 23, 1953.

3. Ibid., January 24, 1953; editorial, 'Ulemacracy.'

4. Ibid., January 23, 1953.

5. Ibid., May 14, 1953.

6. CAFD, vol. xv, p.127.

7. Ibid., pp.127-33.

give the people the right to live and vote freely but would also create conditions under which they could live and vote freely. He characterised the Indian Constitution as 'more Islamic' in the sense of the greatest happiness of the greatest number.<sup>1</sup> He deplored the betrayal of the interests of the Muslims as well as of the minorities by the parochialism of the proposed constitution.<sup>2</sup> As for a tribunal of ulama to review legislation, he said, 'the only tribunal before which we can go - however fallacious, however backward, however illiterate and however politically unconscious - is the tribunal of the people.'<sup>3</sup> Thus, there were those who proposed that Pakistan should proceed to imitate the model of an Islamic state during the early period in practical operation - the Constitution of Medina. Others, mostly politicians and intelligentsia, urged a more liberal approach. Qureshi stated: 'These [back to Medina] <sup>school</sup> persons would want us to reproduce a society which no longer exists and a polity which was suited to that society. They would make us believe that all that was done at that time was the final interpretation of Islam and it is not possible for the human intellect to deviate from it in any detail .... If we are told to follow the principles which guided the creators of the Republic after the death of the Prophet, there could have been no difference of opinion with them. But when for every action or institution we are expected to find a precedent, we are being asked to act in a most un-Islamic manner'.<sup>4</sup> He went on: 'It has been recognised in all Muslim countries that in many respects the mutable part of the Shar' requires considerable

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1. CAPD, vol. xv, p.292.

2. Ibid., p.294.

3. Ibid., p.293.

4. I.H. Qureshi, Pakistan: An Islamic Democracy, pp.3-4.

overhauling and the immutable bases need a new interpretation.<sup>1</sup> To make a provision in the constitution giving a power of veto to a body of learned theologians and jurists on laws passed by the legislature would be a most retrograde step.<sup>2</sup> 'If the mass of the people are Muslims and their faith is sound, they will instinctively accept the correct interpretation. If they do not accept the correct interpretation and wilfully persist in error ... no authority can put them right.'<sup>3</sup> So according to him, <sup>the</sup> Shariah is not entirely immutable and is to be interpreted by the application of human reason in response to the changing needs of humanity in different conditions.<sup>4</sup> The reinterpretation and reorientation of the Shariah can only be undertaken by the legislature as the supreme representative of the people.<sup>5</sup> Qureshi's view was very similar to that of Iqbal.<sup>6</sup> 'The constitution of a country must reflect the ideals on which its people want to base their political life', observed Qureshi. The Assembly was right in setting for itself the ideals of Islam. But these ideals should be given a rational, dynamic interpretation, for the people of Pakistan failed to keep abreast of progress in the development of political institutions and social fabric.<sup>7</sup> Progress and Islamic ideals can be reconciled in a three-fold definition of sovereignty in an Islamic state: (1) the legal sovereign shall be the Muslim law; its definition shall be in the hands of the legislature; (2) the political sovereign shall be the people who will elect and dismiss their governments; (3) the real sovereign will be basically the principles of Islam, brought into the public forum and discussed at length.<sup>8</sup>

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1. I.H. Qureshi, Pakistan: An Islamic Democracy, p.21.

2. Ibid., p.23.

3. Ibid., p.26.

4. Ibid., p.20.

5. Ibid., p.23.

6. See Chapter ii.

7. Qureshi, op.cit., pp.2,5.

8. Ibid., pp.26-7.

Modernists replied that the Islamic scriptures offer no practical guide to the framers of a constitution. A.K. Brohi, who was later to become the Minister in charge of the draft constitution of 1954, wrote: 'The problem of constitution-making in Pakistan has become complicated due to the false emotional associations that have been formed due to what I call a wrong insistence on the slogan, viz. that the constitution of Pakistan would be based on the Islamic Law. To me at any rate this appears to be a paradoxical position...'<sup>1</sup> The Quran could not be 'expected to provide a pattern of constitution for a State which would be valid for all the time to come.'<sup>2</sup> This viewpoint was strongly attacked as a betrayal of the ideals of Pakistan. Brohi wrote two more articles to show that he had not intended to advocate a constitution in which Islam played no part. '...If there be any clear and direct statement in the Quran as to what our constitution should be like, then of course it has got to be followed: the problem then is not one of re-writing the constitution, which already exists in the Quran, but one of enforcing it.'<sup>3</sup> He added: 'I have never said that I do not want Islamic constitution: all I have said is that having regard to the accepted notion of what constitutional law is, it is not possible to derive from the text of the Quran any clear statement as to the actual content of the constitution of any State.'<sup>4</sup> Qureshi had a similar idea in his mind when he wrote: '... there is no such thing as an Islamic constitution. The quest in Pakistan was misdirected; the search should have been for an Islamic way of life in this twentieth century, not for an Islamic constitution.'<sup>5</sup> Nishtar said: 'Any law which is against <sup>[the]</sup> Quran, of course, will be void, but any law

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1. Dawn, August 24, 1952, A.K. Brohi, 'Thoughts on the Future Constitution of Pakistan.'

2. Ibid.

3. Ibid., September 21, 1952.

4. Ibid., September 7, 1952.

5. I.H. Qureshi, "Islamic Elements in the Political Thought of Pakistan," in R. Braibanti and J.J. Spengler (eds.), Tradition, Values and Socio-Economic Development, p.241.

which deals with that sphere of law which has been left to the discretion of the people by the Quran, and such matters cover 95 per cent of affairs, will not be void.'<sup>1</sup> He had pinned his faith on the parliamentary system. '... We had the parliamentary system in existence for many years in this country and for six years even after the establishment of Pakistan. We have got used to it.'<sup>2</sup>

This view of an Islamic state was not accepted by the ulama. 'Our law is complete and merely requires interpretation by those who are experts in it. According to my belief no question can arise the law relating to which cannot be discovered from the Quran or the hadith,'<sup>3</sup> so said Maulana Abul Hasanat, President, Jamiat-ul-Ulama-i-Pakistan. One of the most vigorous exponents of an Islamic polity was Maulana Maududi. He was opposed to the idea of separation on the basis of nationalism.<sup>4</sup> Like all groups that had opposed the creation of Pakistan, the Jama'at was under a cloud. The Jama'at was inactive from August 1947 to January, 1948.<sup>5</sup> After this brief period of silence, Maududi began to put forward his claims for a full-fledged Islamic constitution. The establishment of Pakistan was 'to achieve the real and ultimate objective of making Islam a practical, constitutional reality.' He asked: '... if secular and Godless instead of Islamic Constitution was to be introduced and if the British Criminal Procedure Code had to be enforced instead of the Islamic Shariah what was the sense in all this struggle for a separate Muslim homeland?'<sup>6</sup>

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1. CAPD, vol.xvi, p.328.

2. CAPD, vol.xv, p.475.

3. Munir Report, p.211.

4. Maududi's pre-partition views have been discussed in ch.ii.

5. Binder, op. cit., p.96.

6. S.A.A. Maudoodi, Islamic Law and Constitution, p.17.

According to Islam, he says, the ultimate sovereignty in matters of legislation rests with God. The main object of Islamic law is to enable Muslims to lead virtuous lives, and for this it classifies legislation into three categories: the mandatory (fard and wajib), the recommendatory (matlub), and the permissible (mubah).<sup>1</sup> The obligatory elements of Islamic law as classified by Maududi are broadly those laws laid down in clear terms in the Quran or the authentic traditions of the Prophet, such as the prohibition of alcoholic drinks, interest and gambling, the punishments prescribed for adultery and theft and the rules for inheritance.<sup>2</sup> The recommendatory provisions are those which the Shariah desires Muslim society to observe and practise. 'Some of them have been very clearly demanded of us while others have been recommended by implication and deduction from the Sayings of the Holy Prophet.' The remaining sphere, permissible legislation is very wide and is 'exactly the sphere where we have been given freedom and where we can legislate according to our discretion to suit the requirements of our age.'<sup>3</sup> It is flexible and 'has thus the potentialities of meeting the ever-increasing requirements of every age.'<sup>4</sup> Permissible legislation may come into being by interpretation (ta'wil), analogous deduction (qiyas), disciplined judgment of jurists where no precedents exist (ijtihad) and juristic preference (istihsan).<sup>5</sup> But these four methods can be exercised only by properly qualified persons and within the limits prescribed by Islam. The rules derived by these methods must be accepted unanimously (ijma) or having the approval of majority

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1. S.A.A. Maudoodi, Islamic Law and Constitution, pp.24-5.

2. Ibid., p.34.

3. Ibid., pp.25-6

4. Ibid., p.34.

5. Ibid., pp.35-6.



of Muslims.<sup>1</sup> Maududi is even prepared to accept the subordination of the executive to the majority decisions of the legislature, since it is not likely that a Caliph or a consultative council of the moral calibre of the early Islamic society can now be found in Pakistan.<sup>2</sup> The sub-continent had suffered an infidel rule for so long that its moral, social, economic and political life had been deviated far from the Islamic ideals. 'It is, therefore, inevitable that the required reform should be gradual and the changes in the laws should be effected in such a manner as to balance favourably the change in the moral, education, social, cultural and political life of the nation.'<sup>3</sup> Maududi attempts to explain his point by referring to the institution of a body of persons whom the Prophet and his successors consulted on all matters relating to affairs of state. The decisions taken by them undoubtedly served as precedents and were in the nature of ijma which, however, cannot be said to be the new legislation but the application of an existing law to a particular case.<sup>4</sup>

As regards the traditional Islamic punishment of severing of hands for thefts, Maududi argues that under the conditions of present day society where there are gross and unjust inequalities of wealth even the punishment for committing thefts is doubtful, 'not to speak of cutting off the thief's hands.'<sup>5</sup> But under an Islamic social order where the state ensures the basic necessities of life to all, the punishment for such criminals would naturally be very severe because they are unfit to live in such a just, generous and healthy society

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1. Maudoodi, op. cit., p.43.

2. Ibid., pp.126-7.

3. Ibid., p.52.

4. Munir Report, pp.211-2.

5. Maudoodi, op. cit., p.29.

and would cause tremendous harm to it, if left unchecked!...<sup>1</sup>

As for the objections raised against the reintroduction of the Shariah in the same rigid form as was in vogue in the classical period of Islamic history, Maududi claims that the Shariah existed in the Indo-Pakistan sub-continent up to the beginning of the nineteenth century. For example, the penalty of severing the hand of an habitual thief was inflicted as late as 1791.

By the middle of the 19th century the whole of the Shariah had been abrogated excepting of course injunctions regarding purely personal matters of Muslims like marriage, divorce, etc.<sup>2</sup>

Therefore, 'coming to our own times and our own country, Pakistan, if we wish to promulgate Islamic Law here, it would mean nothing less than the demolition of the entire structure built by our British masters and the erection of a new one <sup>in</sup> its place.'<sup>3</sup>

Non-Muslims may enjoy all the civil rights; even in economic matters there will be no discrimination; but they will be exempted from the responsibility of defending the state.

Maududi along with the leading ulama agrees that the position of non-Muslims in an Islamic state will be that of zimmis and they will not be the full citizens of Pakistan because they are not entitled to the same rights as Muslims. 'They will have no voice in the making of the law, no right to administer the law and no right to hold Public offices.'<sup>4</sup> Those who complain about the unequal treatment of Muslims and non-Muslims in an Islamic state Maududi retorts: 'If any one has any objection with regard to these two kinds of citizenships in an Islamic State and their distinctive features, he should try to acquaint himself with the

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1. Maudoodi, op. cit., p.30.

2. Ibid., pp.15 f.n., 50-1.

3. Ibid., p.51.

4. Munir Report, p.212.

details of the treatment meted out practically by all ideological states to the people who do not believe in their ideology and with the disabilities attaching to all national minorities of all national states.<sup>1</sup> The question, therefore, whether a person is or is not a Muslim will be of fundamental importance; and in this matter when the leading ulama were questioned, each of them gave an answer different from the rest.<sup>2</sup>

The new Constitution of the Jama'at-i-Islami of Pakistan adopted on July 4, 1952, enforces strict conditions for membership. Apart from the observance of the religious obligations of Islam and obeying of teachings and practices of the Prophet, Quran and the Sunnah, a member must strive wholeheartedly for the realisation of the main objective of the Jama'at, namely, the establishment of an Islamic way of life in Pakistan. He must swear to abide by the creed of the Jama'at. The process of selection was very rigorous. At the time of partition there were only 625 members of the Jama'at.<sup>3</sup> The membership figure rose to 999 by 1954.<sup>4</sup>

In his Law College lectures delivered in February 1948, Maududi insisted that the Constituent Assembly must make the following unequivocal declaration: '(i) That we Pakistanis believe in the supreme sovereignty of God and that the State will administer the country as His agent;

(ii) That the basic law of the land is the Shari'ah which has come to us through our Prophet Muhammad (peace be on him);

(iii) That all such existing laws as are in conflict with the Shari'ah will be gradually repealed and no such law as may be in conflict with <sup>[the]</sup> Shari'ah shall be framed in future;

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1. Maudoodi, op. cit., p.145.

2. Munir Report, pp.215-8.

3. K.B. Sayeed, "The Jama'at-i-Islami Movement in Pakistan," Pacific Affairs, March, 1957, pp.63-4.

4. Munir Report, p.243.

(iv) That the State, in exercising its powers, shall have no authority to transgress the limits imposed by Islam.'<sup>1</sup>

This declaration, Maududi believed, would have a far-reaching effect on the national life. The electorate would elect those most suited to carry out the intention of such declaration. The development of an Islamic state from this basis would take but ten years, 'and as this change comes about gradually, the previous laws can be amended or repealed and Islamic laws substituted for them.'<sup>2</sup> In his constitutional proposals written in August 1952 and submitted to the Constituent Assembly of Pakistan, Maududi changed his former views on the right of the head of ~~the~~ state to interpret the Shariah and was in favour of granting the Supreme Court jurisdiction in questions of the repugnancy of acts of the legislature against the Shariah. He wrote: '... neither the mere insertion of the Objectives Resolution... nor the inclusion of an article in the Directive Principles to the effect that no legislation will be made against the Qur'an and the Sunnah, or even the formation of a Committee of Ulama for consultative purposes (but not having final voice)... will serve that purpose.... That purpose can only be achieved if provision is made in the body of the Constitution itself that no Legislature, Central or Provincial, shall have the power to enact any law which conflicts with the teachings of the Qur'an and the Sunnah. Moreover there should be a specific provision in the Constitution that every citizen will have the right to challenge in the Supreme Court any law passed by a Legislature on the ground of its being repugnant to the teachings of the Qur'an and the Sunnah and therefore ultra vires of the Constitution.'<sup>3</sup> In addition to his original four demands he

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1. Maudoodi, op. cit. pp.54-5.

2. Ibid., p.56.

3. Ibid., p.153.

added other new demands relating to civil rights and the independence of the judiciary, the responsibility of the state to provide food, clothing, housing, medical aid and education to every needy citizen, the declaration of the Ahmadiyya community as a non-Muslim minority, educational reforms in accordance with Islamic ideology, religious training for civil servants and the provision of facilities whereby civil servants might observe the tenets of Islam.<sup>1</sup> The main support for the Jama'at comes from cities. Lahore is its headquarters and its most important branch is in Karachi. It is still extremely weak in East Pakistan. Maududi has an appeal among those Mullahs who are neither ultra-reactionary nor tinged with Westernism. Politically, however, his party has never demonstrated much strength. It has lacked the funds to wage much of a campaign and has had continually to fight against government candidates. The role of the Jama'at against the Ahmadiyya community during the 1953 Punjab riots apparently weakened the party.<sup>2</sup>

The Munir Report spoke of 'the ceaseless clamour for Islam and <sup>[the]</sup> Islamic State that is being heard from all quarters since the establishment of Pakistan.'<sup>3</sup> But it also stated 'that the form of Government in Pakistan, if that form is to comply with the principles of Islam, will not be democratic is conceded

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1. Maudoodi, op. cit., pp.153-64.

2. The Ahmadis are the followers of Mirza Ghulam Ahmad (1835-1908) who claimed to be a Prophet and the promised Messiah. The claim, according to other Muslims, put him and his followers outside the pale of Islam. Prophet Muhammad is believed by the general body of Muslims to be the last Prophet. Ahmadis for the first time were shown as a separate Muslim sect in the census report of 1901. The number of Ahmadis is stated to be in the neighbourhood of 200,000 in Pakistan. The anti-Ahmadiyya agitation gathered momentum since the establishment of Pakistan. Other Muslims, especially the prominent ulama of Pakistan, started a movement against the Ahmadis and demanded that the Ahmadis should be officially declared as a non-Muslim minority community, that Zafarullah Khan (an Ahmadi) be dismissed from the office of Foreign Minister and that the Ahmadis be barred from high public offices. These demands, according to the leading ulama, were a corollary from the Objectives Resolution. The rejection of the demands culminated in the Punjab riot of 1953. Munir Report, pp.9,10,127,186-7.

3. Munir Report, p.231.

by the ulama.<sup>1</sup> The report pointed out that 'an Islamic State... cannot ... be sovereign, because it will not be competent to abrogate, repeal or do away with any law in the Qur'an or the Sunnah.... Sovereignty, in its essentially juristic sense, can only rest with Allah.' In an Islamic state, therefore, people cannot make laws, because 'ijma'-i-ummat in Islamic jurisprudence is restricted to ulama and mujtahids of acknowledged status and does not at all extend, as in democracy, to the populace'.<sup>2</sup>

'Legislature in its present sense is unknown to the Islamic system... There is in it no sanction for what may, in the modern sense, be called legislation.'<sup>3</sup> If the ulama point of view was to be accepted, the need for a legislature would virtually disappear. The idea that law-making was to be confined to the practitioners of Islamic law would seem to approach very closely to theocracy. This fear was shared by non-Muslims as well as by many <sup>of the</sup> ~~other~~ Muslim intelligentsia and professional politicians.

So the framers of the constitution had to confront this question for many years, and this hurdle in the way of making a constitution proved to be formidable. The Basic Principles Committee Report, as adopted by the Constituent Assembly in September 1954, ensured a parliamentary form of government. The real executive authority was vested in a cabinet which would be responsible to the legislature. Although there were many Islamic provisions and clauses the ulama were not given any special privileges to interpret the Islamic principles and the report could not be called truly Islamic as demanded by the ulama. The complicated procedure for dealing with legislation repugnant to

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1. Munir Report, p.210.

2. Ibid.

3. Ibid., p.211.

the Quran was replaced by a new section. The Supreme Court rather than the ulama board was given jurisdiction over this matter.<sup>1</sup> It was provided that for a period of at least twenty-five years, the repugnancy section should not apply to 'fiscal and monetary measures, laws relating to banking, insurance, provident funds, loans and other matters affecting the existing economic, financial and credit system.'<sup>2</sup> Finally came the recommendation that the head of the state should be a Muslim.

After the dissolution of the first Constituent Assembly, Major-General Iskander Mirza, the new regime's Minister of Interior, urged the need to begin 'with a clean slate' in planning a new constitution. He talked of 'controlled democracy' and said that the attempt to work democracy on British lines made during the last seven years, had led to disaster. It was proposed to adopt the American constitutional system with modifications.<sup>3</sup> In East Pakistan, the muddle which he found reinforced the very poor opinion which he had formed in West Pakistan about the suitability of parliamentary institutions to serve the real needs of the country. Presumably, an executive appointed for a fixed term and not dependent for its existence on a shifting and uncertain parliamentary majority - was the best form of polity to aim at. Mirza began publicly to voice his conviction that religion and politics ought to be kept separate, 'otherwise there would be chaos.'<sup>4</sup> Sir Ivor Jennings was asked to draft a constitution in which, to quote his words, 'the American idea of an executive irremovable for four years was grafted on to a British system of representation.' Jennings, however, emphasised that there was no intention to produce an

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1. Report of the Basic Principles Committee (1954), p.41

2. Ibid.

3. H. Feldman, A constitution for Pakistan, pp.66-7.

4. Round Table, December 1954, p.50.

undemocratic system. On the contrary, it was thought that a system in which the nature of the government was determined by bargains between the leaders of political groups, as in France, was likely to be less democratic and more corrupt than a system in which the government was given four years to carry out its policy.<sup>1</sup> These ideas did not, of course, please the members of the Constituent Assembly. Mirza found that if he wanted to put them into operation, he would have to do things for himself.

The draft constitution which was presented to the Second Constituent Assembly in January 1956, was the outcome of prolonged discussions in the Coalition Party.<sup>2</sup> The Coalition Party, with its several component groups - the Muslim League, the United Front, the Nizam-i-Islam, the Congress and the United Progressive - held diametrically opposite views on fundamental constitutional issues. There were months of bitter controversy on the role of Islam in the State. But all the Muslim groups in the Coalition Party agreed upon Islamic provisions. The Awami League directed the main opposition to the Islamic provisions. The Awamis had not only dropped the nomenclature 'Muslim' from their organisation and opened its door to non-Muslims but had with renewed vigour pledged themselves to the joint electorate demand.<sup>3</sup>

H.S. Suhrawardy, the Awami League chief, raised objection to calling 'a State an Islamic State when it is not an Islamic State.'<sup>4</sup> He vehemently opposed restricting the head of state to a Muslim. He added: 'Surely calling a Republic an Islamic Republic when there is hardly anything in the Constitution or in our administration to justify it is not an Islamic provision...

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1. Sir I. Jennings, The Approach to Self-Government, p.18.
  2. CAPD, vol. i, p.1792, January 9, 1956.
  3. Round Table, December 1955, p.76.
  4. CAPD, vol. i, p.3653, February 29, 1956.



Surely limiting the headship of the State to a Muslim in a country where 88 per cent of the people are Muslims is nothing else but childish patter or a bauble to please some fanatics.<sup>1</sup> By incorporating Islamic provisions, Iftikharuddin said, they had done 'a great injustice to Muslims of the world, and to Islam in general.'<sup>2</sup> The title 'Islamic Republic' came under heavy fire. Three non-Muslim ministers voted with the Awami League and others to give a recorded division of forty-seven to twenty-two.<sup>3</sup>

The constitution, in its final form, incorporated some Islamic principles, such as the 'promotion of Muslim unity and international peace' and 'promotion of Islamic principles.' It was stated that 'steps shall be taken to enable the Muslims of Pakistan individually and collectively to order their lives in accordance with the Holy Quran and Sunnah'. Article 198 read: 'No law shall be enacted which is repugnant to the Injunctions of Islam as laid down in the Holy Quran and Sunnah... and existing law shall be brought into conformity with such Injunctions.' But this clause was left to the good faith of the legislatures to enforce. The President had to be a Muslim and Articles 197 and 198 instructed the President to set up 'an organization for Islamic research and instruction in advanced studies to assist in the reconstruction of Muslim society on a truly Islamic basis' and to appoint a commission to make recommendations for bringing existing law into conformity with the injunctions of Islam. But the personal laws of non-Muslims would remain unaffected by this provision. Apart from these few clauses, the constitution did little to intensify the Islamic character of the state. The parliamentary system was adopted.

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1. CAPD, vol. i, p.3653, February 29, 1956.

2. Ibid., p.3684.

3. Ibid., pp.3410-1, February 21, 1956.

Our survey with regard to the controversy over the Islamic state will not be complete unless we consider the views of non-Muslim representatives in the two Constituent Assemblies. The non-Muslims had ~~a~~ specific reasons for uneasiness arising from the decision to bring into being an Islamic state. Their model was a secular democratic state. They had listened hopefully to the words of Jinnah. But the gradual compilation of the proposed constitution showed the addition of more and more Islamic provisions. It began with the presentation of an Objectives Resolution, when as many as seventeen amendments were moved by Hindu members seeking to establish the secular position of the state.<sup>1</sup> B.K. Dutta voiced the objections of the Congress Party. 'Politics and religion belong to different regions of the mind... Politics... belongs to the domain of reason. But as you intermingle it with religion, as this Preamble to this nobly conceived Resolution does, you pass into the other sphere of faith.'<sup>2</sup> The clause 'as enunciated by Islam', he said, at once created a ruling race, the Patricians of Pakistan and condemned the minorities to the position of the Plebeians. The nation would remain communally divided into two distinct houses, the minorities tasting neither democracy, nor freedom, nor equality, nor social justice but being merely tolerated.<sup>3</sup> The leader of the Opposition, S.C. Chattopadhyaya, also protested vigorously. The minorities, he said, would be reduced to the position of 'the drawers of water and hewers of wood.'<sup>4</sup> Professor R.K. Chakraverty stated that 'religion and politics should not be mixed up. Religion is after all a matter of faith and belief... a matter private to

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1. GAPD, vol. v, pp.98-100.

2. Ibid., pp.13-4.

3. Ibid., pp.27-8.

4. Ibid., p.91.

one's life.'<sup>1</sup> While the Report of the Basic Principles Committee (1952) was being debated in the Assembly, the Hindu members roundly attacked both its basic philosophy and particular provisions. B.K. Dutta feared that the achievement of Pakistan had encouraged the mullah element and that the political leaders were likely to be overwhelmed by them.<sup>2</sup> 'The pattern of the constitution proposed is Parliamentary Democracy,' said Dutta. An 'attempt has been made to sew the Islamic design into it... You can have it either Islamic or Parliamentary, not both at the same time.'<sup>3</sup> He quoted Blackstone on parliamentary government and then surveyed prominent Muslim political thinkers from the ninth to the twelfth centuries, all of whom deviated from the idea of the Islamic state and leaned towards the idea of the sovereignty of the people.<sup>4</sup> The members of the Basic Principles Committee, said Dutta, undertook the task abandoned a thousand years ago, as absurd of reconciling two irreconcilable principles.<sup>5</sup> 'Democracy and religiosity cannot go hand in hand.'<sup>6</sup> The proposal to bring the existing laws into conformity with Islamic principles was denounced. The different Muslim sects do not agree on the interpretation of the Quran, much less on the other three sources of Islamic law. The 'narrow exclusiveness' that prescribed that the head of ~~the~~ state should be a Muslim would cause the Muslim majority to regard itself as 'God's elect', the non-Muslims to be considered 'helots', and the country to lose prestige before the world.<sup>7</sup> In a country with an overwhelming Muslim majority the head of ~~the~~ state would always be a Muslim without 'this inglorious exhibition of an

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1. CAPD, vol. v, p.38.

2. CAPD, vol. xv, p.23.

3. Ibid., pp.22,23.

4. Ibid., p.23-4.

5. Ibid., p.25.

6. Ibid., p.28.

7. Ibid., pp.28-9.

utterly selfish outlook.'<sup>1</sup> He referred to the constitutions adopted by other Muslim countries. He then deplored the majority recommendation on separate electorates.<sup>2</sup> Professor R.K. Chakraverty found the constitution Islamic in so far as was convenient to the framers, but neither thoroughly Islamic nor thoroughly modern. The report, he contended, betrayed Jinnah and Liaquat Ali Khan. The committee had created six classes of citizens instead of one and by separate electorates had made one of them a perpetual majority and another in perpetual minority. It had betrayed the unborn generations by a surrender to mediaevalism and priesthood.<sup>3</sup> There were other non-Muslim speakers but only one, a Parsi member from the Punjab, professed to be satisfied with the 'undiluted Islamic constitution.'<sup>4</sup> The Hindu members threw themselves into an appeal for the principle of joint electorates insisting that they needed no special protection, that all Pakistanis should be treated alike and there should be no discrimination on the basis of religion.<sup>5</sup> They tabled many amendments to liberalize the Basic Principles Committee Report. But they were defeated by an overwhelming majority on each attempt. In November 1953, they walked out of the Assembly. In a statement in the Assembly before they left, S.C. Chattopadhyaya declared that the minority members had worked in the Assembly to make Pakistan a modern democratic state but had been disappointed by the repeated insistence on the 'two-nation' theory, the refusal to assure the minority that its personal laws would not be interfered with on the ground of repugnancy to the Quran and Sunnah, the setting up of an organisation by the government to propagate religion, the name 'Islamic Republic of Pakistan', the

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1. CAPD, vol. xv, p.30.

2. Ibid., pp.30-5.

3. Ibid., pp.76-7, 80.

4. Ibid., p.46; P.D. Bhandara.

5. CAPD, vol. xvi, pp.266 ff.

requirement that the head of ~~the~~ state should be a Muslim, the thrusting of separate electorates on the minorities, the undemocratic method of arriving at decisions in the Assembly and frequent references and undue emphasis on the Islamic constitution. All these factors, he asserted, had helped to make the presence of the Hindus in the House useless.<sup>1</sup>

With one or two exceptions they did not return to the Assembly for discussions on the Basic Principles Report until the final debate on the adoption of the report as a whole. After the departure of these twelve men, progress was swift because the amendments in their names were not moved. On the final day of the debate, S.C. Chattopadhyaya cried out: '... we are stateless; we are pariahs; we are outlaws.'<sup>2</sup> Professor R.K. Chakraverty characterised the constitution as 'unfair and undemocratic' and as having 'broken the solemn words' of Jinnah.<sup>3</sup> When the Basic Principles Committee Report, as amended, was moved on September 21, 1954, twenty-nine members, all Muslims, voted in favour; eleven members, all Hindus (including the Scheduled Caste members), voted against.<sup>4</sup>

In the Second Constituent Assembly, the non-Muslim members vehemently criticised the Islamic provisions. The Congress Party, one of the main components of the Coalition government, dissociated themselves from constitution-making with respect to three clauses, namely, the nomenclature of the constitution, the provision that the head of ~~the~~ state would be a Muslim and the character of the electorate<sup>5</sup>. The Assembly made no decision on the vexed question of joint versus separate electorates and it was left to the provincial assemblies to decide.<sup>6</sup>

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1. CAPD, vol. xv, pp.658-9.

2. CAPD, vol. xvi, p.528.

3. Ibid., p.509.

4. Ibid., p.571.

5. CAPD, vol. i, p.3719, February 29, 1956.

6. Ibid., pp.3467-8, February 21, 1956.

The second great dispute revolved round relations between the centre and the provinces and between East and West Pakistan. When Pakistan came into existence, it was established constitutionally as a federation. The Government of India Act, 1935 provided the structure of this federation. After its inception, the country was faced with grave and abnormal situation that could be met only by strong central action. The provinces had to act as agents of the central government in the restoration of law and order and the establishment of administrative control. As the years went by, the degree of central control instead of diminishing rather gradually was increased. The central government's powers in legislative, financial, administrative and political spheres were so great that, for practical purposes, the country's governmental framework could not be described as federal. The most important of these central government's powers was the exercise of political control in provincial politics through its power of dismissal and appointment of provincial ministry by the provincial Governor who in his relations with his ministers was to act as the agent of the Governor-General. The highly centralised structure of the dominant party, the Muslim League, also contributed towards centralisation. Moreover, the central government could always exercise administrative control over the provinces through the members of the centrally-recruited civil service of Pakistan. Even within the limited field of provincial control the provinces were handicapped by lack of financial resources. This made them more and more dependent on the central government. The 1935 Act had given the major sources of revenue to the centre. The original distribution of sources of revenue was further amended to the advantage of the central government. After independence, in view of central government's needs for funds to deal with the

emergency situation, the sharing of the proceeds of income tax with the provinces was discontinued; the sales tax was taken over by the centre although 50 per cent of the net proceeds was allowed to the provinces subject to a guaranteed minimum for East Pakistan. The central government also took over the estate and succession duties on agricultural land.<sup>1</sup> Sir Jeremy Raisman in his report (submitted in December, 1951) recommended that the original distribution of financial resources as made under the 1935 Act should be resumed and his recommendations were accepted by the government.<sup>2</sup> The provinces, particularly East Pakistan, however, were not satisfied with the allocation of financial resources. The Awami League continued to press for parity in the allocation of financial resources between the East and West wing during the discussions of the 1956 draft constitution in the Constituent Assembly.

Then, there are certain circumstances <sup>inherent</sup> ~~whereat~~ in the very structure of Pakistan which led to difficulties. The inherent geographical peculiarity, viz. the existence of two wings, separated by ~~a~~ more than a thousand miles of foreign territory and the distribution of population, have no close parallel in any other country. These additional difficulties created fear, mistrust and suspicion and added to the political difficulties of reaching an agreement.

The Objectives Resolution envisaged a federal form of government. The decision in favour of a federation was regarded by Liaquat Ali Khan as the 'dictate of geography.' He said: 'It would be idle to think of a unitary form of Government when the

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1. See Callard, op. cit., pp.158-72;

G.W. Choudhury, Constitutional Development in Pakistan, pp.200-1;

Sayeed, Pakistan: The Formative Phase, chs. ix, xii and xvi.

2. Financial Enquiry regarding Allocation of Revenues between the Central and Provincial Governments (1952), Report by Sir Jeremy Raisman, pp.2-5.

two parts of our country are separated by more than a thousand miles.'<sup>1</sup> The Interim Report, which marked the second stage of drafting the constitution, made no attempt to survey all aspects of the constitutional structure. But the main outlines were visible and its federal structure bore a marked resemblance to the 1935 Act. One member commented: 'So far as this Constitution is concerned, if Mr. Churchill had been the Leader of this House (which God forbid), he would have drawn up just such a constitution.'<sup>2</sup> This was a little muddle-headed as Churchill was the main opponent of the 1935 Act! The report gave rise to a storm of opposition. A Muslim Leaguer from East Pakistan expressed his fears on the floor of the House. He stated that the report had aroused grave, although erroneous apprehensions in East Pakistan. There was a growing belief that the report contained principles which, if adopted, would 'reduce the majority of East Bengal into a minority,' and would turn East Bengal into a colony of Pakistan.' The provincial autonomy, it was feared, would disappear, leaving a unitary central government.<sup>3</sup> Even before the publication of the Interim Report, the Chief Minister of East Pakistan, Nurul Amin, felt it necessary to air the legitimate grievances of the province in a speech to the provincial legislature (March 1949). Nurul Amin observed: '... the anxiety on the part of the Central Government to encroach on every field of provincial activities... I consider this to be the most unsound and short-sighted policy. The provinces must be allowed to enjoy the full autonomous position, must be as free from the Central Government as it is thought practical. But particularly this province of East Bengal

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1. CAPD, vol. v, p.5.

2. CAPD, vol. viii, p.163; Shaukat Hyat Khan.

3. Ibid., p.183; Nur Ahmed.



which is so far flung from the capital of the Central Government must enjoy the fullest autonomy.'<sup>1</sup> East Pakistan's chief complaint against the report was that the bicameral system had been so designed as to deprive the province of the majority weightage to which it would be entitled on the basis of population. Opposition assumed the dimension of a full-scale agitation and it seemed that a serious split had occurred between the centre and the province.

The Basic Principles Committee Report (1952) recommended that Pakistan should be organised as a federation. There was to be a parity of representation between the two wings in both the houses of the legislature. The parity proposals gave rise to the sharpest controversy between East and West Pakistan which was mainly a Bengali-Punjabi controversy. The main point of contention between the two major provinces of Pakistan was the quantum of representation for each in the future central legislature. More than anything else it was this issue which for several years held up progress in drafting a constitution for the country. Provincialism had always been recognised as a hydra-headed monster posing threats to the unity and stability of Pakistan. Since the publication of the Interim Report provincial jealousies and rivalries had increased rather than diminished. It gave rise to serious disturbances in East Pakistan, where the people were convinced that its proposals were designed to deprive their province of the majority in the federal legislature to which it was entitled on the basis of population, while West Pakistan was apprehensive that the Government of Nazimuddin would be swayed by the agitation into making undue

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1. East Bengal Legislative Assembly, Proceedings, vol. iii, p.265, quoted in Callard, op. cit., p.175.

concession to the East wing. It was thus in an electric atmosphere that the report saw the light of ~~the~~ day. It attempted to produce an acceptable compromise by the parity formula. There ~~were~~ to be 400 members, 200 from each wing in the lower house and 120 in the upper house, 60 from each wing.<sup>1</sup> East Pakistan was to lose its majority but to get equal representation with West Pakistan in the upper house, in respect of which the original proposal had been that each province, including even Baluchistan, would have an equal number of seats.<sup>2</sup> The representatives of West Pakistan, among whom the Punjabis were the most vocal, regarded this compromise formula as 'an affront to the dignity of West Pakistan.' The press of Karachi and of the Punjab, with few exceptions, joined in a chorus of protest, freely accusing the government of surrendering to pressure from East Pakistan and perpetuating the split between the two wings.<sup>3</sup> Mian Mumtaz Daultana, the Chief Minister of the Punjab, who was one of the members of the Basic Principles Committee, did never give his unqualified assent to the parity proposals and stated that he had signed the report subject to a note of dissent. The issue almost developed into a personal dispute between Nazimuddin and Daultana.<sup>4</sup> The political flood tide swept away the last hope of a completed constitution in 1953. Food and economic crisis and his failure to deal decisively with the anti-Ahmadiyya riots in the Punjab <sup>led to the dismissal of</sup> ~~resulted in~~ Nazimuddin (who still commanded a majority in the legislature) ~~dismissal~~ by the Governor-General, Ghulam Mohammad, in April 1953. He was replaced by another Muslim Leaguer Mohammed Ali who had been active in Bengal politics prior to partition and at the time of his appointment was the Ambassador to the United States. The

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1. Report of the Basic Principles Committee (1952), pp.11,14.
  2. CAPD, vol. viii, p.21.
  3. Round Table, March 1953, p.174.
  4. Munir Report, p.285.

new Premier, Mohammed Ali, evolved a new formula known as the 'Mohammed Ali formula' to solve the question of representation in the central legislature. The compromise on representation was the result of discussions between the central and provincial leaders of the Muslim League.<sup>1</sup> The 'Mohammed Ali formula', which rather surprisingly satisfied the Punjab, was that East Pakistan should have its majority in the lower house - 165 out of a total of 300 seats - while in the upper house there would be 50 seats divided equally among the five units; thus East and West Pakistan would share equally in the aggregate membership of both houses.<sup>2</sup> To give the parity reality it was laid down that each house should have equal powers, and every measure would have to be passed by the upper as well as the lower house.<sup>3</sup> In the case of a difference of opinion between the two the bill would have to be placed before a joint session to be passed by a majority vote, but the majority should have to include at least 30 per cent of the members present and voting from each of the two wings. As a further safeguard to maintain the balance between the two wings it was provided that a vote of confidence and no-confidence could be moved only in a joint session, and could be passed by majority only if the members voting for it included at least 30 per cent of the members from each wing. No controversial measure could be passed unless it received substantial support from both wings.<sup>4</sup> The country as a whole welcomed the new formula with relief.<sup>5</sup>

While the Report of the Basic Principles Committee (1952) was being discussed in the Assembly, several members raised their voice against the unitary features of the report. According to B.K. Dutta, the report had 'reduced the Provinces to no more

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1. CAPD, vol. xv, p.14.
  2. Ibid., p.13.
  3. Ibid., 14-5.
  4. Ibid., p.15.
  5. Round Table, December 1953, p.85.

than mere local bodies.'<sup>1</sup> He called for a constitution on a new model which was akin to Gandhi's Panchayat Raj. 'The sovereignty of the people will find full expression in the village and other primary republics, which will surrender powers they are naturally incapable of wielding to higher and higher bodies. Call it a federation or a confederation, let no one funk before this unorthodox idea of constitution-making.'<sup>2</sup> His goal was to achieve maximum decentralisation of power along with a decentralised economy. The nationalisation of basic industries and rational over-all planning for the state as a whole would be required.<sup>3</sup> Shaukat Hyat Khan insisted that the fullest autonomy should be given to the provinces. 'Our call is autonomy, autonomy, and autonomy.'<sup>4</sup> Contrary to the report, the residuary powers must remain with the provinces. Iftikharuddin argued against the Mohammed Ali formula of representation and a strong centre. The former would produce only provincial antagonism. Centralisation would not ensure unity and East Pakistan would revolt against the nominally federal government.<sup>5</sup> The allotment of 67 of the most important subjects of legislation on the federal list, 37 on the concurrent list and 36 only on the provincial list was, in his opinion, 'totally unjust' and 'most unnatural.'<sup>6</sup> Nur Ahmed observed: 'The whole idea which runs through the whole gamut of this Report, is to make a strong Central head, a strong Centre tantamounts to monarchical form of Government.'<sup>7</sup> Fazl-ul-Huq voiced the demands of East Pakistan for complete zonal autonomy on the basis of the 'Lahore Resolution' of 1940.<sup>8</sup>

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1. CAPD, vol. xv, p.38.

2. Ibid., p.44.

3. Ibid.

4. Ibid., p.134.

5. Ibid., pp.295-7, 305.

6. Ibid., pp.304-5.

7. Ibid., p.149.

8. Ibid., p.397.

The East Pakistani members, especially the Hindus, demanded that residuary powers should vest in the units, and that powers in respect of defence, currency and foreign affairs only should be conferred on the centre.<sup>1</sup> Firoz Khan Noon, the Chief Minister of the Punjab, urged that more powers be delegated to the provincial government in East Pakistan and to the provinces in West Pakistan jointly to be exercised by some sort of administration. There was a considerable body of opinion in favour of giving more powers to East Pakistan because it had been felt for some time, especially in view of the experience over the past seven years that the province must be administered in many subjects by the legislature in Dacca rather than by the central legislature in Karachi.<sup>2</sup> The framers of the constitution argued in favour of a strong central government. Mahmud Husain called for 'a federal constitution but with as much centralization as possible.'<sup>3</sup> A.K. Brohi, the Law Minister, argued that if there had been geographical contiguity between the two wings, then the principle of decentralisation of power might have been the basis of the constitution. But to overcome this natural barrier in the way of the unity of the people of Pakistan there was no alternative but to provide for a strong central government.<sup>4</sup>

The framing of the constitution was affected by the changing fortunes of the political parties and was closely tied to current politics. In the elections in East Pakistan held in March 1954, the United Front, ranging from the right-wing Nizam-i-Islam to the Communist Ganatantri Dal, won 223 of the 237 Muslim seats, the Muslim League 10, in an Assembly of 309.<sup>5</sup> The political and economic ills of the province, the language

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1. CAPD, vol. xv, pp.152-3. See also CAPD, vol. xvi, pp.375ff.
  2. CAPD, vol. xvi, pp.356-7, 359.
  3. CAPD, vol. xv, p.155.
  4. Ibid., p.349.
  5. Civil and Military Gazette, April 5, 1954.

issue and the fear of having an undemocratic constitution, were among the causes of this overwhelming defeat of the League. Thus, it was a vote against the outgoing provincial ministry, which stood thoroughly discredited in the eyes of the people of East Pakistan. To a considerable extent it was a vote against the central government on the grounds that it was Muslim League itself and that it supported the provincial League and its unpopular leaders. The people in East Pakistan had become violently anti-centre and more provincial and parochial in outlook. They had almost felt that with the departure of the British, the only change that had come to them politically was the change of masters. Politicians, industrialists, educationists, technicians, engineers and others from West Pakistan were no more than a bunch of 'foreigners' and 'exploiters'. These charges were much the same as had been levelled against the Hindus and the British during pre-independence days. Since independence, East Pakistan was being administered in all important matters, from Karachi. The dearth of trained civil servants among the Bengali Muslims made it necessary for the local administration to be carried on mainly, at the higher levels, by officers deputed from the Punjab. The main Bengali grievances were that they were treated unfairly in such matters as the allocation of revenues, development projects, and government posts by the central government.<sup>1</sup> Writing in Far Eastern Survey in 1959, R.D. Lambert advanced three reasons which contributed to Bengali regionalism: (i) the gradual isolation of East Pakistan from the surrounding area, (ii) the sense of threat and exploitation which made regionalism an aggressive force, and (iii) the continuous

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1. S. Maron, "The Problem of East Pakistan", Pacific Affairs, June 1955, p.132.

dialectic of regional versus national loyalty.<sup>1</sup> The United Front leaders cleverly exploited the situation. In its election manifesto, the United Front, among other things, had demanded complete autonomy for East Pakistan in all matters except defence, currency and foreign affairs.<sup>2</sup> In April, 1954, the United Front formed a government with Fazl-ul-Huq as Chief Minister. The United Front insisted after the elections that the East Pakistani incumbents in the central assembly no longer represented the province since most of the members of the Constituent Assembly were members of the League. It demanded the resignation of the central cabinet, the dissolution of the Constituent Assembly, and an end to constitution-making until the national assembly had been reconstructed.<sup>3</sup>

The proceedings of the Constituent Assembly had become somewhat unrealistic ever since the results of the East Pakistan elections had proved that members from that province had forfeited the confidence of their constituents and were no longer representative of public opinion in East Pakistan. They continued their deliberations in the Assembly and went ahead in giving final touches to the draft constitution. The most vital and important clauses of the draft constitution were passed when attendance was thinnest. At times it was difficult to raise the necessary quorum for holding the Assembly session. Meanwhile, the two-month-old United Front ministry was dismissed in May 1954 by the Governor-General under emergency powers and East Pakistan was put under Governor's rule.<sup>4</sup> In the Assembly, the Bengali group with the help of certain League members from West Pakistan attempted to

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1. R.D. Lambert, "Factors in Bengali Regionalism in Pakistan", Far Eastern Survey, April 1959, p.49.
  2. R.L. Park, "East Bengal: Pakistan's Troubled Province," Far Eastern Survey, May 1954, pp.72-3.
  3. G.J. Calder, "Constitutional Debates in Pakistan II," Muslim World, April 1956, p.150.
  4. There was a general breakdown of law and order, and Fazl-ul-Huq was charged with 'treasonable activities.'

curb the powers of high-handed Ghulam Mohammad. First, the five-year-old PRODA (Public and Representative Offices Disqualification Act) was repealed; thereby, the politicians thought they had disarmed the executive from coercing them.<sup>1</sup> Next, without the usual notice a bill was introduced and rushed through the Assembly divesting the Governor-General of the power to dismiss his cabinet which still enjoyed the Assembly's confidence and making it obligatory for him to accept the advice of his ministers.<sup>2</sup> The Governor-General responded by dissolving both the Constituent Assembly and the incumbent cabinet a month later. The step which was characterised as a 'constitutional coup', had all the elements of drama. It was a surprise move while the Governor-General was away on tour. The bill was passed in great haste and without any discussion. At once it was hailed as a democratic move in one quarter and in another condemned as a reactionary step aimed at placing powers in the hands of an 'unrepresentative coterie.'<sup>3</sup> The consequent legal proceedings and constitutional crisis need not be discussed here.<sup>4</sup>

From the protracted, and not uninteresting, legal controversy over the Governor-General's powers and functions which followed, the finding emerged that only a new Constituent Assembly could frame a constitution. In June 1955, complying with an order from the Governor-General, the provincial legislatures elected a new Constituent Assembly consisting of eighty members equally divided between the two wings of Pakistan, with eleven seats reserved for non-Muslims. The Muslim League with twenty-six members was still the largest, but without an

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1. CAPD, vol. xvi, pp.419-51.

2. Ibid., pp.499-502.

3. Round Table, December 1954, p.48.

4. See Sir I. Jennings, Constitutional Problems in Pakistan.



absolute majority. The party position in the second Constituent Assembly was as follows:<sup>1</sup>

Muslim League	26
United Front	16
Awami League	13
Congress	4
Scheduled Castes Federation	3
United Progressive Party	2
Others	<u>16</u>
	80

As a result of its failure to obtain a majority the Muslim League was forced to form the first coalition government in the eight years of Pakistan's history with H.S. Suhrawardy's Awami League. The Parliamentary government was restored in East Pakistan and the United front ministry assumed office with Abu Hussain Sarkar as Chief Minister. Earlier, during the period of Governor's rule the United front had split, the Awami League having separated itself from the rest of the Front which was still led by Fazl-ul-Huq. In August 1955, Ghulam Mohammad, seriously ill, was replaced in office by Iskander Mirza. Meanwhile, the Muslim League transferred its support from Mohammed Ali to Choudhury Mohammed Ali, the former Finance Minister and civil servant, who became Prime Minister and formed a coalition government with Fazl-ul-Huq's United Front in August 1955. Both the United Front and the Awami League offered to join the coalition with the Muslim League on their own terms. The United Front's terms were that the Awami League should be excluded from the government and that in exchange for support for the West Pakistan 'one unit' plan, the Muslim League should agree to regional autonomy in the new constitution. The Awami League offered to join the coalition on the terms that Suhrawardy should be the

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1. Callard, op. cit., p.64.

should be the Prime Minister, that the new constitution should provide for joint electorates, and that Bengali should be adopted as a state language.<sup>1</sup> As it turned out, the Awami League's terms were not accepted and it moved into opposition. Fazl-ul-Huq, who not long ago charged with treasonable activities, became the Minister of Interior.

The first important and the most radical measure passed by the Second Constituent Assembly was the Establishment of West Pakistan Act - the so-called 'one unit' scheme. Many people had for some time been pressing for this kind of arrangement which would simplify the most difficult constitutional problem - the representation of the East and West wings in the central legislature by creating a unified Western wing as the counterpart of an already homogeneous Eastern wing. Even Jinnah and Liaquat Ali Khan seemed to have favoured this idea. But Jinnah died before he could do anything about it and Liaquat Ali too died before he could tackle the problem. There was a proposal to similar effect made by the Baluchistan Muslim League in December 1947.<sup>2</sup> There were many budding politicians who put up strong opposition to the integration of West Pakistan initially because they thought that their personal position would be at stake. There was also the fear among the smaller provinces in West Pakistan of Punjabi domination (the Punjab being the largest province both in population and area in the Western wing of the country). As a compromise the idea of zonal federation caught on. This scheme was put forward by Firoz Khan Noon in the first Constituent Assembly in September 1954. In such a federation the provinces and their assemblies would be left intact, but

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1. Feldman, op. cit., p.97.

2. L.F. Rushbrook Williams, The State of Pakistan, p.140;  
Feldman, op.cit., pp.77-8.

would send their representatives to the zonal federation assembly which would administer difficult inter-provincial subjects such as communications and irrigation.<sup>1</sup>

Firoz Khan Noon revealed that a committee, appointed to consider distribution of powers between the centre and the provinces, unanimously decided that the provinces of West Pakistan should be united into 'one unit'.<sup>2</sup> This was challenged by other West Pakistani leaders. The Chief Minister of Sind, Pirzada Abdus Sattar, voiced firm opposition to such a scheme. 'At no time .... was this one-unit question or the Zonal Federation question raised throughout all these six or seven years that we have worked on this Constitution.'<sup>3</sup> He further said that the proposal had come before the Muslim League Party meeting and the resolution in favour of 'one unit' was defeated by thirty-two to two.<sup>4</sup>

When the Assembly was dismissed the government had less need to worry about political opposition. It was alleged that three provincial ministries, the Pirzada ministry in Sind (November 1954), the Rashid ministry in N.-W.F.P. (July 1955), and the Noon ministry in the Punjab (May 1955) were dismissed by the central government on this issue.<sup>5</sup> The scheme had first been announced to the public by the Prime Minister, Mohammed Ali, in November 1954. In the words of the Prime Minister, 'their [provinces] existence has served to breed provincialism' by dividing the people in the West wing into Punjabis, Baluchis, Sindhis, Patkans and so on.<sup>6</sup> Within a month the provincial assemblies of N.-W.F.P., Sind, and the Punjab met and voted their approval of the scheme.<sup>7</sup> Ghulam Mohammad was so convinced

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1. CAPD, vol. xvi, pp.356-9; Round Table, December 1954, pp.46-7.

2. CAPD, vol. xvi, p.357.

3. Ibid., p.371.

4. Ibid., p.372.

5. Feldman, op. cit., p.84.

6. Round Table, March 1955, pp.175.

7. Callard, op. cit., p.187.

that unification was essential to the best interests of the country as a whole, that at the end of 1954 and the beginning of 1955, he tried to achieve it by purely executive action. He had set up a council composed of Governors, ministers and high-ranking civil servants to work out the administrative problems involved in the integration. He was defeated, because of legal obstacles pointed out by the Federal Court.<sup>1</sup>

Suhrawardy, who as a Law Minister committed himself to supporting the 'one unit' bill, now turned out to be its most uncompromising opponent,<sup>2</sup> and when the new Minister for Parliamentary Affairs, Sardar Amir Azam Khan, introduced the bill in August 23, 1955, in the Assembly, it came under heavy fire from the Awami Leaguers, who made every attempt to obstruct its passage. The Red-Shirt leader, Khan Abdul Ghaffar Khan, and a prominent Awami Leaguer, the Pir Sahib of Manki Sharif, declared in most unambiguous terms their uncompromising attitude towards the plan. They insisted that the question of West Pakistan's merger was not an executive function of the central government, but was fundamentally a constitutional issue and should be decided in accordance with the wishes of the people through a referendum. They feared that if 'one unit' would come into being it would be under the complete domination of the Punjabis.<sup>3</sup>

Debate occupied thirty days of the Assembly's time and was frequently heated and bitter. The bill was attacked on two main grounds: that its real motive was to diminish the power of East Pakistan, and that in its origin and content the bill was arbitrary and undemocratic. Fazlur Rahman, an independent member, pointed out that its effect would be to emphasise the

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1. L.F. Rushbrook Williams, op. cit., p.141.

2. Suhrawardy said that he agreed with the principle of the bill but the change in his attitude was necessitated by 'a change in the very basis of this One-Unit Bill'. CAPD, vol. i, p.644, September 10, 1955.

3. Round Table, September 1955, pp.389-90.

division of the country. 'Sir, it has been stated the greatest merit of the Bill is to do away with the distinction between Punjabis and Sindhis and Pathans and this and that but you do not realize that by dividing Pakistan into two, you are manifold magnifying that provincialism, by making it a local patriotism for the two regions. Then no longer the cry will be Punjabis and Sindhis but the cry will be Bengalis and Non-Bengalis.'<sup>1</sup>

The essence of the bill, said Abul Mansur Ahmad, a prominent Awami League leader, was that the political leaders of West Pakistan 'must be able to talk to people of East Bengal in one voice so that they may not use that position of numerical superiority. That is the unfortunate basis for the integration of West Pakistan. The very idea is wrong. If I were left with bringing an integration Bill I would have given a much better Bill which would not have been based upon fear for and conspiring against East Bengal.'<sup>2</sup>

Mian Jaffar Shah of N.-W.F.P. moved that the bill for the creation of West Pakistan should be circulated for the purpose of obtaining public opinion by April 1, 1956 and added that the sponsors of the bill had 'hatched a conspiracy.'<sup>3</sup> The general trend of the opposition was not so much to the general principle of the bill, though they attempted to delay its acceptance by moving the motion that the bill be circulated for eliciting public opinion and that a referendum should be held. The members from East Pakistan objected to the inclusion of Karachi in the integrated province on the ground that a city that had been built up with national tax funds should be handed over as a source of income and prestige to the government of one province, and demanded that it should remain a

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1. CAPD, vol. i, p.274, August 24, 1955.

2. Ibid., p.1423, September 30, 1955.

3. Ibid., p.268, August 24, 1955.

separate entity as the federal capital of the whole of Pakistan.<sup>1</sup> On September 30, 1955, the Assembly passed the 'one unit' bill merging 310,000 square miles into a single province. The vote was 43-13, with 24 members abstaining.<sup>2</sup> The 'one unit' was inaugurated in October 14, 1955.<sup>3</sup>

As a constitution-making body, the new Assembly did better than its predecessor, from whose immense legacy of reports, memoranda and conclusions it profited. It began work in July 1955 and presented a draft constitution in January of the following year. It had also to surmount greater difficulties, as unlike the first Assembly, there was no party with an absolute majority. The Assembly was repeatedly adjourned in November and December 1955 because the Coalition Party could not resolve differences on constitutional matters. The different groups in the party resorted to pressure tactics to get their respective demands incorporated in the draft constitution. There were months of bitter controversy on the old issues such as the role of Islam in the state, the strong versus weak centre, ~~the~~ joint electorates versus separate electorates. The Congress and the United Progressive Party which formed the coalition threatened to cross the floor if the demand for joint electorates was not conceded while the Nizam-i-Islam and the Muslim League would have nothing to do with joint electorates.<sup>4</sup>

It seemed paradoxical that the United Front of Fazl-ul-Huq, so long out of power, was demanding maximum provincial autonomy, but now in office, was prepared to confer much wider

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1. CAPD, vol. i, pp.268ff, August 24, 1955.

2. Ibid., pp.1471-2, September 30, 1955,

3. The tribal areas and Frontier States were expressly excluded from the legislative power of the West Pakistan legislature, and the Governor of West Pakistan, in administering and legislating for these 'special areas', were to be under the general supervisory control of the Governor General.

4. Round Table, March 1956, pp.178-8; G.W. Choudury, op.cit., p.162.

powers on the centre, though it made a few important concessions by adding to the provincial list, such subjects as railways and industries. The Awami League insisted that no constitutional scheme would be acceptable to it if it failed to incorporate the famous '21 point' programme (the election manifesto of the Awami League - United Front combination). Abul Mansur Ahmad told the Constituent Assembly that he did not find anything common between the two wings of the country except a common religion (barring a section of the people of East Pakistan) and the fact that they achieved independence on a common platform. Apart from these, everything is different: languages, traditions, cultures, customs, calendars, standard times, and even climate. He even spoke of the two wings as 'two countries' and 'two peoples.' He would not compromise even if he were convinced that Pakistan with a centre with only three subjects would not become a stable state.<sup>1</sup>

The left-wing of the Awami League led by Maulana Bhashani had even held out a threat of secession. Addressing a meeting at Dacca on January 15, 1956, he said that if the centre did not right the wrong 'East Pakistan would have to think in terms of secession.'<sup>2</sup> In the Assembly, Abul Mansur Ahmad launched a bitter attack against the draft constitution. He regarded the draft constitution as 'a bad replica of the Government of India Act, 1935, and a poor copy of the Indian Constitution.'<sup>3</sup> East Pakistan's grievances in the financial sphere found better expression in the Assembly. It was consistently demanded that the constitution should ensure a fair and equitable distribution of resources in the absence of

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1. CAPD, vol. i, pp.1814-6, January 16, 1956.

2. Round Table, March 1956, p.179.

3. CAPD, vol. i, p.1870, January 17, 1956.

which provincial autonomy, it was feared, would become a farce. Abul Mansur Ahmad referred to the anomalous disparity between the two wings in the federal and military services, development of industries, distribution of foreign exchange, foreign aid and financial aid from the centre, and demanded that there should be parity in all respects.<sup>1</sup> Ataur Rahman Khan, another distinguished Awami Leaguer, stated '... we must have our economic freedom, economic liberty, because the two Unites are altogether different.'<sup>2</sup>

Iftikharuddin remarked that by giving East Pakistan 'a farce of federalism' the constitution-makers were actually 'setting up a unitary form of government.'<sup>3</sup> He suggested that a 'federation or a sub-federation of linguistic Provinces in the West, and a confederation on equal basis with limited subjects with East Pakistan... is the best way to national unity.'<sup>4</sup> Hamidul Huq Choudhury on behalf of the government pointed out the absurdity of running the central government with only three subjects. He claimed that the draft constitution contained full regional autonomy for East Pakistan and restricted the powers of the centre to the barest minimum.<sup>5</sup>

The relation between the executive and the legislature, particularly the powers and position of the head of the state assumed great importance in view of certain controversial and undemocratic actions of the head of the state under the interim constitution. The draft had to be modified considerably in respect of the provisions relating to the powers and position of the head of the state.<sup>6</sup> A suggestion was made that the Prime

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1. CAPD, vol. i, pp.1843ff., January 17, 1956.

2. Ibid., p.2124, January 27, 1956.

3. Ibid., p.3684, February 29, 1956.

4. Ibid., p.3683.

5. Ibid., pp.2096ff., January 26, 1956.

6. See Ibid., February 14, 1956. Article 37 read: '... the President shall act in accordance with the advice of the Cabinet.'



Minister should be elected by the parliament so that the discretionary power of the head of ~~the~~ state might not be misused. It was alleged that under the interim constitution the head of ~~the~~ state appointed somebody (Mohammed Ali of Bogra) who was not even a member of the parliament and who was 'flown from Washington without having any footing on the soil' and was 'planted as our Prime Minister.'<sup>1</sup> Not only this, 'people who have been turned out and ~~kicked~~ out from their constituencies, they have been made Ministers of our country'.<sup>2</sup> The United Front, which previously was very critical of emergency provisions, retained almost all provisions of the draft constitution of 1954. The Awami League criticised the emergency provisions, which they thought would be a 'derogatory to the principle of provincial autonomy' and occasion might arise when certain provisions might be misused, especially when the centre and the provinces would not be governed by the same political party. They tried to restrict the central government's power of interference in provincial matters only in times of 'war', 'external aggression' or 'armed rebellion', and opposed its application to 'internal disturbance'.<sup>3</sup> Mahmud Ali of the Ganatantri Dal referred to the Section 92-A of the Government of India Act, 1935 (as amended) which was misused for political ends.<sup>4</sup> He added: '... we do not understand, what is meant by internal disturbance. Anything may be internal disturbance.' Similarly, the terms 'security of Pakistan' and 'the security of economic life of Pakistan' were stated to be vague. 'Anything may be considered as endangering the economic life of Pakistan.'<sup>5</sup>

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1. GAPD, vol. i, p.3081, February 14, 1956.

2. Ibid., p.3083.

3. Ibid., pp.2795ff., February 9, 1956.

4. Ibid., p.2797.

5. Ibid., p.3255, February 17, 1956.

The federal framework of the constitution formed a logical continuation of the provisions of the 1935 Act. In the eight or nine years before the adoption of the constitution virtually no steps had been taken to expand the degree of autonomy of the provinces. It was not, therefore, to be expected that the constitution-makers would be willing to permit a drastic revision of the distribution of powers to begin in 1956. However, the constitution made some concessions to the supporters of maximum provincial autonomy. The number of items allotted to the provinces was much greater than before.<sup>1</sup> There were provisions for parity in the services of the country and for autonomy in certain subjects of legislation, such as railways and industries. Residuary powers were vested in the provinces whereas in the draft constitution of 1954 they were vested in the head of the state. The constitution, on the other hand, had made little changes in regard to the distribution of financial resources, which was the focal point of controversy between the central government and the province of East Pakistan, except that estate and succession duties on agricultural land and stamp duty were transferred to the provinces. The administrative relations between the centre and the provinces also remained unchanged. The federal structure in this sphere showed marked tendencies towards central control.

Another crucial issue involving antagonism between the East and West was that of the national language. This issue caused the greatest anger and resentment in East Pakistan. Nearly 55 per cent of the total population speaks Bengali, whereas 28 per cent speaks Punjabi and 7 per cent Urdu.<sup>2</sup> But in West Pakistan

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1. One reason for this sudden increase in the provincial list is that, while nine federal taxes were grouped as one item, twenty provincial taxes were listed separately.
  2. Figures are according to the 1951 census.

the common language among all of them is Urdu. Some of the advocates of Urdu managed to convey the impression that the defence of Bengali was both un-Islamic and opposed to the interests of national unity.<sup>1</sup> It was made clear from the start that the national leaders intended to insist on Urdu as the state language. In February 1948, Liaquat Ali Khan, in reply to an amendment (moved by a Congress member) to the Assembly rules to permit Bengali to be used in the House along with Urdu and English, stated: '... Pakistan has been created because of the demand of a hundred million Muslims in this sub-continent and the language of a hundred million Muslims is Urdu... Pakistan is a Muslim State and it must have its lingua franca the language of the Muslim nation.'<sup>2</sup> About a month later Jinnah's speech at Dacca, the capital of East Pakistan, could leave no doubt concerning his view. 'Let me tell you in the clearest language that there is no truth that your normal life is going to be touched or disturbed so far as your Bengali language is concerned... It is for you, the people of this province, to decide what shall be the language of your province. But let me make it very clear to you that the State Language of Pakistan is going to be Urdu and no other language.'<sup>3</sup>

The people of East Pakistan remained dissatisfied over the language issue, and after the dominant personality of Jinnah was removed by his death, discontent became both audible and visible. The Interim Report's flat declaration that Urdu should be the national language of Pakistan<sup>4</sup> was subjected to severe criticism in East Pakistan. In February 1952 serious rioting broke out at Dacca. The immediate cause of the trouble

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1. Ataur Rahman Khan ascribed this view to Liaquat Ali and to Punjabi leaders. CAPD, vol. i, p.518, September 6, 1955.

2. CAPD, vol. ii, p.17.

3. Speeches - Quaid-i-Azam Mahomed Ali Jinnah as Governor-General of Pakistan, 1947-1948, p.86.

4. CAPD, vol. viii, p.41.

was the language issue. In his tour of the province Prime Minister Nazimuddin (himself a Bengali) emphasised in a public speech that Urdu would have to be recognised as the sole state language of Pakistan. There was great indignation, especially among the student communities. For five days wild disorder prevailed at Dacca. Chief Minister Nurul Amin hastily moved a resolution in the provincial assembly calling on the central government to adopt Bengali as one of the state languages.<sup>1</sup>

In April 1952, Nur Ahmed moved a motion in the Constituent Assembly urging the adoption of Bengali as one of the state languages.<sup>2</sup> The mover proposed his motion but declined to speak to it. Other Muslim Leaguers from East Pakistan sat silent. The case for Bengali had to be urged entirely by the Hindus. 'Sir,' said D.N. Dutta, 'it is most regrettable that silence has been imposed upon my friends who come from East Bengal.'<sup>3</sup> The League ultimately voted solidly for the postponement of a decision on the issue.<sup>4</sup> Later that year, when the Report of the Basic Principles Committee was published, it made no recommendation as to the state language. The omission of all mention of language had been criticised as a defect of the report. The postponement of a decision resulted in uncertainty, bitterness and suspicion for the next two years. The framers of the constitution could not defer the decision for an indefinite period. The victory of the United Front (the language issue figured prominently in its election manifesto) compelled the Muslim League leaders at the centre to re-open

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1. Round Table, June 1952, p.258.

2. CAPD, vol. xi, p.22.

3. Ibid., p.37. Some members from West Pakistan, such as Shaukat Hyat Khan, Sardar Asadullah Jan Khan, and Seth Sukhdeb, supported the motion. Ibid., pp.25ff.

4. Ibid., pp.46-7.

the issue. In April 1954, the Muslim League Parliamentary Party agreed in terms of a 'language formula' that both Urdu and Bengali should be the official languages of Pakistan.<sup>1</sup>

The 'language formula' which was accepted by the Constituent Assembly in May 1954 was to be found in the Report of the Basic Principles Committee, as adopted, by the Constituent Assembly. The report recognised Urdu and Bengali as the official languages of Pakistan, but expressed the pious hope that 'the State should take all measures for the development and growth of a common national language' (without mentioning the name of the common language).<sup>2</sup> The 1956 Constitution did not entertain any hope of a common language, and recognised both Urdu and Bengali.

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1. Feldman, op. cit., p.53.

2. Report of the Basic Principles Committee (1954), p.72.

## CHAPTER VII

## CONCLUSION

Both Indian and Pakistani Constitutions were largely moulded by the circumstances in which they were born. The Indian Constitution was the outcome of nearly three years' labour on the part of the Assembly and the country's leading constitutional experts, who had studied all the democratic constitutions in the world for adaptation to suit Indian needs and conditions. This was mainly the work of men trained in British constitutional ideas and adopted both the general character and many of the detailed provisions of the 1935 Act. <sup>(March 1, 1948)</sup> The Times commented: 'Indeed, Lord Templewood and other framers of the comprehensive Government of India Act of 1935 will find their labours embodied in many of its fundamental features'. ~~The Times, March 1, 1948.~~ Durga Das Basu, who analysed the sources which go to make up the Indian Constitution, estimates that 75 per cent of the constitution owes its origin to the Act of 1935. But its federal form is borrowed from Canada, its ideological contents (namely, the fundamental rights and the Directive Principles) from Eire and the U.S.A, while the principles of responsible government are, of course, British.<sup>1</sup> Sardar Hukam Singh, the Sikh representative, described the constitution as a 'hybrid' on the floor of the Assembly: 'We have substituted', he said, 'an American head in the form of a President, replaced the old limbs by an English parliamentary system, poured Australian flexibility in bones and flesh, infused Canadian look of a single judiciary and added an Irish appendix of Directive Principles and thus brought out a hybrid which we have been pleased to name the Indian Constitution.'<sup>2</sup>

1. D.D. Basu, Commentary on the Constitution of India, vol.i, p.5.

2. CAID, vol.xi, p.749.

The establishment of British rule brought into being educated middle classes attracted to Western ideas and methods. The new big cities, Bombay, Calcutta, Madras - represent a new principle: the organisation of the city as an independent unit. We witness the full paraphernalia of European city life, with sheriffs, mayors, corporations and aldermen. It is the city that has created the middle classes in India. The emergence of the middle classes both as leaders in political and economic life and as reservoirs of essential scientific skills, has been in the main the outcome of the new life in the cities. The growth of organised city life has rendered obsolete the old political structure based on a rural economy.<sup>1</sup> The new factors which undermined the traditional social order were those of Western education, a capitalist economy, a free judiciary, the press and parliamentary institutions. These not only supplied the ideological principle of liberalism but created new social classes to champion those principles.<sup>2</sup> A large proportion of the members of the Indian Constituent Assembly were lawyer-politicians, products of the big cities. Thus, the constitution framed by these people owed a great deal to Western political philosophy, and more especially to British liberal thought, which had powerfully influenced Indian leaders. It is, therefore, not surprising that the constitution while it borrowed from the other countries, derived its inspiration from the British parliamentary system. 'Borrowings', according to Sir. B.N. Rau, one of the architects of the Indian Constitution, 'have been adapted to India's peculiar circumstances.' 'To profit from the experience of other countries or from the past experience of one's own is the path of wisdom. There is another advantage in borrowing not only the substance but even the language

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1. K.M. Panikkar, Asia and Western Dominance, pp.326-7.

2. B.B. Misra, The Indian Middle classes, pp.338-9.

of established constitutions; for we obtain in this way the benefit of the interpretation put upon the borrowed provisions by the countries of their origin and we thus avoid ambiguity or doubt'.<sup>1</sup> But the Indian Constitution differs materially from the British constitution not only in being a written instrument but also in its contents (for example, the head of state is hereditary in Britain and elected in India, while the British Constitution contains nothing corresponding to <sup>the</sup> directive principles). Although it might be said that the constitution had borrowed the idea of fundamental rights and directive principles from external sources, they were not entirely foreign to India. The basic conception of a law which even kings could not alter and had to obey in the fear of deposition, was familiar in ancient India as early as the second century B.C, and even the directive principles of social policy can be found in the Arthasastra of the fourth century B.C.<sup>2</sup> Even the position of the President as a constitutional head was rooted in ancient India. 'It is not surprising', said Rau 'because India has been familiar from ancient times with the idea of Kings acting on the advice of Ministers and occasionally, even changing Ministers in response to the will of the people.'<sup>3</sup> The Gandhian section of the Congress Party exercised important formative influences. Some of the ideals for which Gandhi lived and died (such as prohibition, ~~one-land~~, village panchayats, ~~cottage~~ industries, and the abolition of untouchability), were embodied in the constitution by his followers. A school of political thought advocated the introduction of the American presidential system, and some Muslim members preferred the Swiss composite executive. These proposals lost favour. Altogether British constitutional ideas predominated, and Jennings

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1. Rau, India's Constitution in the Making, p.361.

2. Rau, 'The Indian Constitution - I', Manchester Guardian, May 2, 1949.  
See also Hindu, August 12, 1949.

3. Hindu, August 12, 1949.



described the constitution as 'a series of lessons in British constitutional principles'.<sup>1</sup>

One of the major difficulties which confronted the framers of the Pakistani Constitution was how to reconcile the requirements of an Islamic state with the accepted practices of modern democracy. '... The whole principle on which Pakistan was mooted and then established was Islamic. It was not a territorial or an economic community that was seeking a state, but a religious community. The drive for an Islamic state in India was in origin not a process by which a state sought Islaminess but one by which Islam sought a state.'<sup>2</sup> Thus, in the case of Pakistan 'the whole raison d'être of the state is Islam: it is Islam alone which brought it into being, and Islam alone which holds it together.'<sup>3</sup> The Muslim League, a nationalistic coalition of heterogeneous elements with different ideas, proposed the formula for Pakistan. The leadership came largely from the Westernising middle classes who were drawn mainly from the U.P. with but a few from Bengal. They were marked off from the rest of the Indian middle classes in an increasingly communal situation by being Muslim, by being a minority which by its own admission less advanced and severely disadvantaged.<sup>4</sup> When Pakistan was first established, only a very small minority of Muslims advocated that the state should be secular rather than Islamic.<sup>5</sup> Unlike their counterparts in India, the Westernising middle classes of Pakistan had failed to evolve a successful ideology.<sup>6</sup> They merely voiced the demands of the people. The growth of big cities which had facilitated the emergence of middle classes in India had been

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1. Jennings, The Approach to Self-Government, p.16.

2. W.C. Smith, Pakistan as an Islamic State, p.21.

3. Ibid., p.29.

4. W.C. Smith, Islam in Modern History, p.222; See also S. Abid Husain, The Destiny of Indian Muslims, p.117.

5. W.C. Smith, Islam in Modern History, p.252.

6. Ibid., p.230.

largely absent in Pakistan; and consequently in a largely rural area those religious groups, who advocated a state based upon rigid Islamic principles and traditions, found a little opposition. This Islamic issue along with the problem of the relationship between <sup>the</sup> East and West wings of Pakistan in the future political set-up of the country, delayed constitution-making for almost eight and a half years. The constitution was an attempt to reconcile differing viewpoints, namely, the harmonisation of the demands of Islamic purists, and federalists and unitary statist. The general consensus of opinion in the Constituent Assembly was for the adoption of the parliamentary system. A few leaders advocated the introduction of the American presidential system. In the early part of 1955 ideas were running on the lines of a constitution approximating more to the American type than to the British. It was contemplated that the President should be elected by the legislature for a term of four years, and that he should nominate the leader of the majority party in the Assembly as Vice-President. The latter would form a government, but his cabinet would not necessarily be drawn from the members of the Assembly. This solution was put forward in view of the fact that parliamentary democracy in the British tradition had not been an unqualified success in the eight years of Pakistan's existence.<sup>1</sup> Sir Ivor Jennings revealed that he was asked to draft a constitution on the American model. The scheme was rejected on the ground that the people of Pakistan were so familiar with the British Constitution that any fundamental departure from it would be regarded with profound suspicion.<sup>2</sup> An analysis was made of the solutions provided in various countries to the problems that were before the Constituent

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1. Round Table, December 1955, p.50.

2. Jennings, op. cit., pp.18-9.

Assembly. Reference was made not only to the federal Constitutions of Canada, Australia, the U.S.A. and the U.S.S.R, but also to South Africa, India, Ireland, Germany, Yugoslavia and especially the Constitutions of Muslim countries.<sup>1</sup> The 1956 Constitution was broadly based on the British parliamentary system and made the executive, led by the Prime Minister responsible to parliament. With a view to appeasing the insistent orthodox Muslim opinion, an honoured status was given to Islam in the provisions of the constitution. (For Example, the designation in the constitution of the 'Islamic Republic of Pakistan, the preamble and the directive principles of state policy incorporating Islamic principles, the provision that the head of state should be a Muslim, the provision that steps should be taken to enable the Muslims to order their lives in accordance with the Quran and Sunnah and that no law should be enacted which was repugnant to the injunctions of Islam as laid down, the setting up of an organisation for Islamic research and institution and the appointment of a commission to make recommendations for measures to bring existing law into conformity with the injunctions of Islam). But they did not override the fundamental democratic and secular ideas on which the constitution was based. Islamic principles were not accepted as the basic foundations of the political structure of Pakistan: in many respects, Pakistan in 1956 accepted the principles of parliamentary democracy. The federal framework was largely based on the 1935 Act and the American and Australian Constitutions in which the powers not allocated to the centre remain with the units. As far as the judiciary was concerned, Pakistan followed the model of the Act of 1935 and the Indian Constitution and not the model of the U.S.A, where courts are divided into federal and

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1. Jennings, <sup>op. cit.</sup> p.16.

state courts. In Pakistan the High Courts of the provinces and the Supreme Court formed one single hierarchy.<sup>1</sup> Fundamental rights and directive principles were borrowed from the U.S.A. and Eire respectively. Irish directive principles clearly outline the fundamental feature of a Christian Catholic state.

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1. K.J. Newman, Essays on the Constitution of Pakistan, p.202.

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